paign, one of your talking points to the citizens of this State was that you are in favor of the passage of a Bill that was then in the Legislature known as the Anti-Communist Bill, which now has been christened the Musmanno Bill.

A. Oh no, the Bill, the Anti-Communist Bill denominated the Musmanno Bill, did not come into existence until after the election.

Q. To the Supreme Court.

A. That's right, that is until after the nomination on July 24th. It was——

Q. Yes, after the nomination, but during the election campaign?

A. Yes, during the election campaign, but——

Q. Just a minute. You answered the question——

A. I know, but——

The Court: Well, if it's an explanation to the last question, all right.

A. There's a question there which wasn't fully answered. You said that I didn't discuss anti-Communism until the campaign——

Mr. Nelson:

Q. No, I didn't ask that question.

[fol. 878] Mr. Nelson: I would like to have the question read.

The Witness: I would like to have the question, if the Court please.

The Court: Read the question.

(Question read.)

A. I would like to submit that the inference there is that that was the first time I advocated the passage of Anti-Communist Legislation, and I want to say that that is not true, because I began this 25 years ago and have been advocating the——

Mr. Nelson:

Q. Let me get this straight. You say 25 years ago, while you were a member of the Legislature, I assume, you proposed Legislation to outlaw the Communists?

A. Before that, even before that, when I came back from Italy and saw——

Q. You answered the question.

A. ——and saw what the Bolshevists had done in Italy——

Q. You answered the question. Is there a record in the Legislative Journal in Harrisburg, or in the Law Library, of any such Bill that you introduced in the period that you were in the Legislature?

[fol. 879] A. I haven't studied the record recently.

Q. It would be in the record if you had introduced such a Bill, wouldn't it?

A. Yes.

Q. All right. Now, Mr. Musmanno, did you at any time that you have been a Legislator, or a Judge, or a politician, introduce a Bill to outlaw the Nazi Bund, or the Ku-Klux-Klan, or the Fascisti in this country?

A. All right, now——

Mr. Lewis: This is objected to——

A. Now you refer to me as a Legislator, a Judge and a politician. I don't know what you mean by a "politician"——

The Court: We will sustain the objection, Judge Musmanno. Break the question down, Mr. Nelson.

Mr. Nelson: All right.

Mr. Nelson:

Q. The time you were in the State Legislature, 1929 to '33—right?

A. '31.

Q. Yes, '31. Did you at that time introduce a Bill in [fol. 880] the Legislature to outlaw the Ku-Klux-Klan which was very active at that time even here in Pennsylvania——

Mr. Lewis: This is objected to.

The Court: Well, the last part of it will be stricken.

The Court:

Q. Did you introduce a Bill to outlaw the Ku-Klux-Klan while you were a Legislator?

A. No, I introduced no such Bill——

Mr. Nelson:

Q. All right, you answered the question.

A. That's true.

Q. At the time when you were a member of the Legislature, you didn't introduce a Bill against the Fascisti, did you?

A. There was no such thing in America, there was nothing to legislate against. And, as a matter of fact, the Ku-Klux-Klan was an illegal organization insofar as it intimidated and terrorized and committed assault and battery therefore there was no need for a law against what you call the Ku-Klux-Klan——

Mr. Nelson: Your Honor, he is going back to a question [fol. 881] which has been answered, and if he forgot to make a speech then I move it be stricken now.

The Court: He said he did not make any—introduce a Bill against the Ku-Klux-Klan. Proceed.

Mr. Nelson:

Q. Did you at any time that you were a Judge and a politician sponsor or support a Bill——

A. Well, now, you say a politician and a Judge——

Q. Wait a minute——

A. (continued) I will have to have you define what you mean by a politician because——

Q. Well, we'll come to that later——

A. Well, all right, but I can't answer your question——

Q. All right, did you at any time as a Judge and a public figure—I think you will admit you are a public figure, that you were——

A. Well, you're a public figure, but I won't say in what way.

Mr. Nelson: I move that that be stricken, your Honor. The man has no right to take advantage of the witness stand to taunt me here.

[fol. 882] The Court: We shall grant your motion and strike it from the record.

Mr. Nelson: Your Honor, I move the jurors be instructed to disregard that remark.

The Court: Whenever we strike anything from the record, the jury will consider themselves as so instructed.

Mr. Nelson:

Q. While you were a Judge and a public figure in Allegheny County, which goes over a period of 25 years, did you at any time introduce a Bill to outlaw the Nazi Bund which was active in Pennsylvania?

A. I did not.

Q. Now, to get back to the question here, your role as private prosecutor in this case, Mr. Musmanno, I think it would be right, would it not, to say that you became a private prosecutor in this case on August 31st when the preliminary hearing was held, I think in Court Room No. 2—right?

A. No, no; in the first place the terminology "private prosecutor" has not been defined; in the second place, I, as a private citizen, swore to an Information against three individuals on August 28, 1950—

[fol. 883] Q. Now, just a minute——

A. (continued) —and the hearing did not take place on August 31st. Outside of that your statement——

Q. I didn't know that you now raise an objection against being called a private prosecutor. I think it was you, Mr. Musmanno, who in Court Room No. 2 before Judge Marshall Thompson stated that you are appearing here in this case as a private prosecutor?

A. Mr. Nelson, I was commenting on your question which has two or three incorrect statements. When I became—if I am a private prosecutor—it depended on the date and you started off with August 31st, and there was something which preceded August 31st.

Q. All right, excuse me, your Honor, I didn't know how to frame this, just the way it ought to be in a legal fashion. But, what I want to find out, what was the date when you became private prosecutor in this case?

A. On August 28th 1950 I swore to an Information——

Q. Yes. Was that the date you became private prosecutor?

A. Well——

Q. Well, that's the question.

A. I am attempting to answer it, Mr. Nelson.

Q. I'm not asking you what you did on the 28th if you didn't became a private prosecutor on that date; I am asking you what was the date that you became a private prosecutor in this case? It's a simple question. Why do you want to make it complicated——

The Court: He said August 28th was when he signed the [fol. 884] Information.

Mr. Nelson:

Q. Was that the date? Is that the answer?

A. That's when I swore to the Information, yes.

Q. And that's when you——

A. There is no terminology in the law which says that a man becomes a private prosecutor. I was a United States citizen and I thought that a crime was being committed, and I swore to an Information. Now, if you want to call me a private prosecutor, that's your privilege, but there is nothing in the papers which says——

Q. Isn't that what you called yourself at the preliminary hearing?

A. I don't recall whether I—I may have used that phrase. I may have used that phrase.

Q. All right, that's all I want.

A. All right, I have given it to you.

Q. That's all I want, what are you quibbling about?

A. I'm not quibbling, I am trying to be precise in my answers.

Q. All right. All right. Before you became private prosecutor—and I will use the term the way you use it, I'm not inferring anything special about it——

A. Very well.

Q. —did you discuss my case, or the case of myself and my co-defendants in the previous case, with anyone in this County?

A. Yes, yes.

[fol. 885] Q. Did you discuss the matter with Judge Blair Gunther?

A. No.

Q. You know him?

A. Yes, I do, quite well.

Q. Did you discuss it with Harry Alan Sherman?

A. I think that I did generally, not in any precise fashion, just generally because he was interested in the subject.

Q. And Harry Alan Sherman is an attorney of this city, is that right?

A. That's right.

Q. And he is an attorney who appeared in the City of Pittsburgh, on the North Side, for a group of citizens who wanted to prevent Negroes from moving into that area, is he? Is that right?

A. I don't know a thing about that——

Mr. Lewis: This is objected to as being incompetent, irrelevant and immaterial——

Mr. Nelson:

Q. You don't know?

A. No.

Q. He's the man the Pittsburgh Courier called anti-Negro; right?

Mr. Lewis: This is objected to——

A. Well, now, if the Court please, I ask for some protection from questions of this kind.

[fol. 886] The Court: We will sustain the objection of counsel.

Exception noted.

Mr. Nelson:

Q. Did you discuss this question with any of the officials of the A.B.C.? You know what the A.B.C. is? Americans Battling Communism—right?

A. I don't know that I do——

Q. I just want to ask you the question as to what the organization is——

A. Yes.

Q. Americans Battling Communism is known as the A.B.C., is that right?

A. That's right, I do know that.

Q. Did you discuss it with any of the officials?

A. I don't know that I did.

Q. Do you know any of the officials of the A.B.C.?

A. Well, I know Judge Gunther is——

Q. Do you know anybody else?

A. And I understand that Mr. Sherman is. That's as far as my knowledge goes.

Q. Do you know anyone else?

A. Not that I know of.

[fol. 887] The Court: Let the record show that the presiding judge here is a member of that organization, at one time held an office in it.

Mr. Nelson:

Q. All right. Is Matt Cvetic a member of that organization?

A. I don't know whether he is, but I do know Mr. Cvetic very well——

Q. All right——

A. ——and discussed with him the prosecution of Steve Nelson and other people too.

Q. Did you discuss the advisability, or the need, or the urgency of arresting myself and my other co-defendants in the first case, with Mr. Rahauser?

A. I don't think I did.

Q. You are a Judge in this country, aren't you, Mr. Witness?

A. That's correct.

Q. And functions relating to the questions of arrest of people for violation of law would be a normal matter for the Police Department and for the District Attorney's office, wouldn't it?

A. I didn't discuss it with Mr. Rahauser but I did discuss it with the District Attorney's office. I discussed with Mr. Viers Edwards, who is an assistant district attorney——

Q. Wait a minute——

A. ——and I discussed it with Sidney Sanes, an assistant district attorney——

[fol. 888] Wait a minute, Mr. Witness. Is it true or is it not true that when you discussed the matter with Mr. Rahauser he stated to you—and it was quoted in the public press—that he thought there was no grounds

on which to arrest me and my friends, and he's the D.A. of this county?

A. That's an absolute falsehood made of sheet——

Q. You mean the papers lied?

A. That's a falsehood and I would like to have you present any——

The Court: Just a minute, now. You denied it. You said you never discussed it——

Mr. Nelson:

Q. You mean the papers lied, Mr. Witness——

Mr. Lewis: I would like to object to the question if I could get a word in here edgewise. The witness already testified he didn't discuss it with Mr. Rahauser.

The Court: Well, this is cross examination. He has the privilege to ask him——

Mr. Nelson:

Q. Well, how did it come about—I'm sorry——

[fol. 889] The Court: Go on. I have overruled the objection and the question has been answered.

Mr. Nelson:

Q. Now, how does it come about that Mr. Rahauser made a public statement on the question?

Mr. Lewis: I object to that——

A. He certainly made no public statement about any conversation with me, because no conversation existed.

Mr. Nelson:

Q. But he did make a public statement, did he not, that under the Sedition Law, or any other law here Communists could not possibly be persecuted in this State?

A. Persecuted? We're not persecuting Communists, we're prosecuting them.

Q. Unless there was an overt act shown. Aren't those his words, unless there was an overt act shown? Right?

The Court: Ask the witness if he knows of any statement made by Mr. Rahauser, if that's what you want to know.

[fol. 890] Mr. Nelson: That's what I want to know.

The Court:

Q. Do you know of any statement——

A. He made no statement to me to that effect.

Mr. Nelson:

Q. All right. He made no statement to you and you don't know about it, you don't know anything about it——

A. There are many statements in the papers with regard to Mr. Rahauser, he's a public official, very much in the public eye, and I can't identify every particular statement made by him which appeared in the press.

Q. Did you, or did you not, before you undertook this action against me as a private prosecutor, ask any of the officials of the Department of Justice in Washington——

A. I certainly did I discussed——

Q. Wait a minute. Did you ask them to institute action against me?

A. I certainly did. I discussed you at length with the Department of Justice very much so.

Q. What did the Department of Justice tell you?

A. They said that you should——that they were going to prosecute you and put you away for a long time; that's what they told me.

Q. And they told you to go ahead and prosecute me as a private citizen?

[fol. 891] I informed them of my actions.

Q. You did?

A. I did.

Q. They knew fully of what you intended to do?

A. They certainly did.

Q. All right. All right. Now, Mr. Musmanno, you stated here on the stand when you testified the first day that you went to the Communist Party headquarters on July 18th and 19th first, to buy literature?

A. That's right.

Q. And you told the jurors here that you had no trouble buying any literature you wanted?

A. That's right.

Q. When you left the headquarters—I think you were there about two hours the second time, and a half hour the first time, is that right, somewhere around there?

A. Well, you have incorporated now my visit of August 31st, that's——

Q. No, July 18th and July 17th.

A. Well, July 18th I was there just a few minutes; July 19th about a half hour or more.

Q. But, Mr. Musmanno, when you left the headquarters you issued a statement to the press, stating that you saw sedition committed in the headquarters of that Party?

A. On July 19th?

Q. Yes.

A. I did not. I issued no statement at all. As I told [fol. 892] you the other time that you examined me on this subject, there were no newspaper men present. I said nothing. The information came to light only through Mr. Onda, who himself talked to the newspaper man.

Q. But there was a statement attributed to you in which you stated that you saw sedition committed in the Bakewell Building?

A. Not on July 19th.

Q. All right. When you undertook this action, Mr. Musmanno, you were Judge of this Court at that time; right?

A. That is true.

Q. You are the Presiding Judge of this Court at the present time?

A. I am not.

Q. Were you the Presiding Judge of this Court when this trial was listed or scheduled to take place, on December 3rd?

A. Yes.

Q. Yes——

A. The case was listed several times and I was not the Presiding Judge all the time——

Q. All right——

A. (Continued:) It was—this case was listed for trial December 3rd many months ago, when I was not the Presiding Judge, so therefore I had nothing to do with setting the date of the trial.

The Court: That date was set, if I may offer for the record, that date was set by this Presiding Judge when he [fol. 893] was sitting in the Assignment Room in October.

Mr. Nelson: The argument isn't about the date, the point I'm trying to get at isn't on the question of the date. I want to have one question pertaining to this fact, whether or not Judge Musmanno was the Presiding Judge when the trial was listed to begin, the date.

The Court: All right.

Mr. Nelson:

Q. Then, Mr. Musmanno, who selected the Trial Judge for this trial?

Mr. Lewis: This is objected to as being incompetent, irrelevant and immaterial.

Mr. Nelson: Your Honor, I would like to know—I don't know the procedure, my belief is that the Presiding Judge is the one who appoints—who sets the cases and who appoints Judges for trials, trials that are listed in that period when he is the Presiding Judge. I think it's a fair question and he can answer it "Yes" or "No".

[fol. 894] The Court: The objection is overruled. Answer the question.

A. The Judges take cases as they come up in the usual course of affairs. There are six court rooms active and whichever Judge happens to be free at the time and a case is ready to be tried gets that particular case.

Mr. Nelson:

Q. Is it your answer then that one of the functions of the Presiding Judge is not to assign Judges for cases?

A. When I preside——

Q. Just answer that, please. I won't be able to understand a complicated answer if you weave in a lot of other stuff.

A. I don't give stuff now. Be careful of your language there. Now, what is your question, please?

The Court: Read the question.

(Question read.)

A. Well, I am giving a direct answer to the question——

Mr. Nelson:

Q. All right.

A. (Continued:) When I preside in Criminal Court I do [fol. 895] not assign cases to particular court rooms. They take their turn.

Q. You mean a Judge goes up there and says: "I want to try this case"?

A. No, no, no, no, no. Judges are assigned to the various court rooms——

Q. By whom?

A. Well, when they report some Judges have a preference for one court room, some for another——

Q. You mean for a physical room?

A. That's right, for a physical room for instance, I like No. 7 so I sit in No. 7. Some Judges like to go up to the floor above which is known as No. 8; some like No. 6; some like No. 3; and so the sign is put outside the door; and then there's a clerk, sometimes an assistant district attorney in the Assignment Room who keeps the list moving, a jury is selected and whichever court room happens to be free at that time will receive that particular case.

Mr. Nelson: Well, I don't know the procedure of these questions, your Honor, I will have to take the witness' answer, but I believe when the trial began your Honor stated that a Judge was not assigned to this case although we were meeting in this room.

[fol. 896] The Court: I don't recall making any such statement. If you want my impression on it, I'll give it to you. Judge Musmanno, during the month of December, was presiding in No. 1 and No. 2, the Assignment Room and the Plea Room. In order that he would have no contact with this jury, have no influence—not be influenced in any way by him, he asked me to receive that jury. I did receive the jury the first morning they came in, I welcomed them and explained their duties. Thereafter, I took care of handling the matters in No. 1 room while Judge Musmanno was handling the pleas and so forth in No. 2 room. He received the Grand Jury in that room. I had nothing to do with the Grand Jury. If there was any assigning of the cases, this case to me, I assume the

responsibility for it by being present in No. 1 room at the time. If there was anything done in No. 6 here, it was only done after the matter had been assumed by me in No. 1.

Mr. Nelson:

Q. So your answer is that you had nothing to do whatever with the assignment of the Judge to this case?

[fol. 897] A. I was presiding——

Q. Just answer the question "Yes" or "No".

A. Well, I have given you the answer that the——

Q. I just want to have a simple answer, so you can say "Yes" or "No", say that you didn't, and that's all the record will show.

A. I will give the answer in accordance with the facts, Mr. Nelson. I don't need any instructions from you as to how to answer questions. The Presiding Judge has already indicated that he was presiding in No. 1 because I purposely and very meticulously and carefully refrained from appearing at any place where I might be seen by prospective jurors who would eventually sit upon this case, and I had nothing to do with the jurors, and absented myself from counsel and jurors and possible witnesses, and sat in No. 2 and heard pleas.

Q. Did you have any discussions with a prospective lawyer that was to be in my case, in which you urged him to take up my defense?

A. I was very much interested that you had proper counsel. I spoke to lawyers and I said generally, "Mr. Nelson is entitled to a lawyer——"

Q. I know how interested you were——

A. "—is entitled to a lawyer," and I insisted that he have an absolute fair trial insofar as I can have anything to do about it. And——

Q. Yes, and you told a lawyer that was to defend me that he should go ahead and be my lawyer—right?

A. I said, generally, to several lawyers who happened to [fol. 898] be up there at No. 2 that I would hope that someone would volunteer——

Q. Will you name them, please?

A. There was Mr. Martin, Mr.—I can't think of his name now, who is around these Courts a great deal—can you——

The Court: Carl Blanchfield?

A. Blanchfield, Blanchfield, Blanchfield. I think Mr. Glick happened to be there. Then I just generally spoke and I said, "I do hope that something can be done to see that the attorney is properly compensated, because he is entitled to a lawyer under the Constitution and we want to see that he has a lawyer." And then I was informed that you refused all these lawyers and went ahead and demanded to try your own case.

Mr. Nelson:

Q. Mr. Witness, you made a speech now and I believe I ought to answer that. You said——

Mr. Nelson: Otherwise I move to strike it from the record.

The Court: We will grant your motion to strike the last part as to your refusal.

[fol. 899] The Court: The only question is whether or not Judge Musmanno had anything to do with securing counsel for you. He has told you that he had made an effort to secure four lawyers. There was another one, William Doty, not mentioned by the witness, but let the record show that I sat in on some of those conferences and when the lawyers were present with Judge Musmanno and myself in the Chambers that we occupy in serving No. 1 and 2 rooms.

Mr. Nelson: And of course, since the matter was raised here, the record should show that Mr. Doty and Mr. Martin claimed they could not defend me because they were ill——

The Court: Oh, well, that's all——

Mr. Nelson: And Mr. Glick said that he would do it if he was given thirty days' time to prepare. And Mr. Blanchfield was so ready to defend me that I was afraid that somebody else bought a rope with which they intended to hang me, and I couldn't come to an agreement with him on the matter of money. He wanted $50.00 a day without know-

[fol. 900] ing anything about this case——

The Court: Oh, now, we aren't going into that. We have let you make a statement.

Mr. Nelson:

Q. Did you discuss the question with Mr. Rahauser who the prosecutor in this case should be?

A. On the morning of August 31st I called Mr. Rahauser's office and asked him if he would send an assistant district attorney to accompany me to the Communist headquarters, and he did. He sent Mr. Sidney Sanes, who was an assistant district attorney.

Q. Did you ask Mr. Rahauser, or did you not, that your nephew, Mr. Cercone, be the prosecutor in this case?

A. I did not.

Q. You had nothing to do with Mr. Cercone being the prosecutor in this case?

A. Mr. Rahauser selects his own trial lawyers.

Q. All right. So it would be proper to say, would it not, I gather that from your testimony, that you became private prosecutor on the 31st of August 1950?

A. Well, I did say August 28th.

Q. 28th?

A. That's when I swore the Information.

[fol. 901] The Court: For the information of the jury, private prosecutors are someone that insfitute the proceedings. Their name appears on the Information as a rule, and then it is followed on the indictment. That, generally, is what we call a private prosecutor.

Mr. Nelson: Your Honor, I think in this case the situation is a good deal different. At the preliminary hearing Mr. Musmanno stood on the witness stand and made his testimony, then he went down to the D. A.'s office and he cross-examined, and I should say that's a good deal different than what average citizens do.

The Court: Well, he says he started on August 28th, as far as this proceeding is concerned, and what you are bringing out was something that he did thereafter, on August 31st, at the hearing I believe——

A. I would like to correct a misstatement by Mr. Nelson. I did not cross examine any witnesses, and he attempted to cross examine me and I replied to him. I did not cross examine witnesses.

[fol. 902] Mr. Nelson:

Q. It is true, is it not, Mr. Musmanno, that on the 3rd of September 1950, five days after you appeared in this court room as private prosecutor, the campaign of the Democratic Party was announced on which you were one of the key candidates, you were a candidate for Lieutenant Governor, weren't you?

A. It is untrue——

Q. Five days——

A. There are many misstatements in your proposition. You said five days after I became private prosecutor that I appeared in Court; I appeared in Court on August 31st, so that statement is incorrect, chronologically——

Q. All right——

A. ——in the second place, you are entirely wrong about the beginning of the campaign, because the campaign had been under way some time.

Q. All right.

A. As a matter of fact, my opening occurred in Stowe Township on July 12th, long before anything began, I had a big meeting in Stowe Township.

Q. All right. So you say your campaign started much before that date?

A. Oh, yes, long before that.

Q. All right. During the month of March, 1950, I believe you sat then, too, as presiding Judge in this Court?

[fol. 903] A. That's correct.

Q. At that time one of the functions was to do what Judge Montgomery explained just now he did in this term, to panel the jurors and give them their instructions——

A. That's the Grand Jury.

Q. The Grand Jury?

A. Yes, and it was I, not Judge Montgomery, even this time that instructed the Grand Jury, which has no connection with the Petit Jury.

Q. It was you who instructed the Grand Jury at that time?

A. Yes.

Q. It is true, is it not, that while you perform your duties as Judge, to speak to the jurors, or prospective jurors, you took upon yourself the job to take one of the

jurors into your chamber and to question this juror about her political beliefs and opinions, without the possibility for this person to have counsel when she was interrogated, is it not?

A. That is not true; not true. You stated I questioned her as to her political beliefs. I did not. Since you have now mentioned the subject I will have to tell you what happened. I presume you want to know what happened, do you?

Q. Go ahead.

A. Very well. I saw that she was listed as the Secretary of the Communist Party of East Pittsburgh. I communicated with the Department of Justice at Washington, D. C., to ascertain if there were any records there on this [fol. 904] person, Alice Roth. They referred me to Matthew Cvetic who had worked with the Communist Party for many years here in Pittsburgh, and who informed me, when I talked with him, that he knew Alice Roth very well and had publicly proclaimed her a Communist. I asked him to come to Pittsburgh. He came to Pittsburgh and he identified Alice Roth sitting in the court room, and then I called Alice Roth into my chamber, the door open so that it was in the nature of a public function, public session, but I wanted to protect her from any public scrutiny or comment until it was ascertained whether she was fit to be a Grand Juror or not. Mr. Cvetic testified and other individuals who knew Alice Roth testified, and other individuals testified in her presence. Then she was asked whether she wanted to make a statement. She looked at Mr. Cvetic and said the only statement she had to make was that she regarded him a rat for having told on her. I asked her whether she would indicate a complete allegiance to our institutions; whether she was a member of the Communist Party; I put several questions to her and her answers so obviously, in my estimation as the presiding Judge, disqualified her as a Grand Juror, as lacking in integrity, in loyalty and in reliability, that I released her from serving on the Grand Jury.

Q. You found all of that out in your chambers without this particular witness' chance to have an attorney at her side to defend her?

[fol. 905] A. She wasn't being charged with crime——

Q. But you interrogated her. It was a star chamber proceeding, wasn't it?

A. No, I say it was a public proceeding.

Q. You didn't say that, Mr. Witness, you said it was in your chambers.

A. The Judge's chamber is public. That's the object of the Judge's chamber. We often have hearings in chambers when we want to protect the name of the individual from unjust and uniformed comments. Very often litigants themselves ask for hearings in chambers; that is as much a public part of the court room—of the Court House as the court room itself.

Q. I see. And that was on March 17th, was it not?

A. Well, it was in that time. I don't remember the exact date but it could be——

Q. And at that time you received in the papers here quite a large headline after what you did in connection with that witness; right?

A. I don't know what you mean? I received—the newspapers covered——

Q. That the woman was branded a Red on the Grand Jury by Musmanno; right?

A. The newspapers covered the item. They cover everything,

Q. Even though it was all in secret, in your chambers, you were attempting to protect her, the newspapers got it in there, didn't they?

[fol. 906] A. The newspapers didn't print anything which happened in chambers, Mr. Nelson. Now, be careful about your statements. The newspapers covered what happened in the open court room when I released her from service.

Q. And that was on March 7th?

A. I presume, if that's what you say it was.

Q. And three days later the Democrats announced Musmanno as a candidate for Lieutenant Governor, and that's when you became interested, Mr. Witness, didn't you, in your anti-Communist campaign, when you became a candidate for Lieutenant Governor?

A. When you are through making your speech I'll answer your——

Q. I'm asking you a question. I'm not making a speech——

Mr. Lewis: I object to the form of that question——

A. Yes, let's have that question read——

The Court: No, re-phrase the question. The objection is sustained as to the form of the question.

A. Now, put your question——

Q. It is true, is it not, that three days after you interrogated this juror, and you started your crusade against Communism, you became a candidate for Lieutenant Gov-[fol. 907] ernor on the Democratic ticket?

A. That is untrue. I was a candidate many, many weeks before that, had filed my papers and had held my opening—my large mass meeting on July 12th. The coincidence that you refer to is simply one of chronology which has nothing to do with the action I took against Alice Roth. As a matter of fact, one of the reasons why they didn't want to slate me was because of what I had done in the Roth case, assuming that my time would be taken up too much in that case to be an active candidate, but that had nothing to do with my candidacy which had already been announced long before.

Q. Well, did you ever, at any other time, Mr. Witness, as a Judge of this Court, when you had to examine jurors or give them instructions, proceed to act in this manner against the person for their political beliefs?

A. I deny in toto that I took anyone off the Grand Jury for political beliefs. I took her, Alice Roth, off the Jury and I presume you refer to her, because she was utterly unreliable and not worthy of being a Grand Juror of the County of Allegheny, Commonwealth of Pennsylvania.

Q. Yes, that was your opinion——

A. It was my opinion and my action, because she was——

Q. Now, Mr. Musmanno——

A. (Continued:) —utterly lacking in respect for the institutions of our country.

Q. Now, Mr. Musmanno, I have here a Decision of the [fol. 908] State Supreme Court of this State——

Mr. Lewis: I object to any discussion of the Supreme Court——

Mr. Nelson:

Q. Which reads as follows.

The Court: Now, don't read anything until we——

Mr. Nelson: Well, your Honor, the Supreme Court slapped this man down; the Supreme Court said he was wrong——

The Court: Now, just a minute. We are not ruling on the admissibility of this, but we are ruling on the form of the question, of you starting to read this Opinion before the matter is offered in evidence.

Mr. Nelson: All right. How shall I do it?

The Court (to reporter): Read the question, just the first part of it.

(Question read.)

[fol. 909] The Court: The objection to the reading of the Supreme Court Decision is sustained.

Exception noted.

The Court: Now, we will permit you, of course, to ask questions concerning the matter, and insofar as the Opinion is concerned unless the whole Opinion is read, which is not customary in matters of this kind, why, you can't read any part of it——

Mr. Nelson: I will be glad to read the whole thing.

The Court: Oh, no. You may ask the witness questions concerning it but don't undertake to repeat the words of the Supreme Court, is what I am trying to tell you, and it's twelve o'clock now and you may resume on this matter at 1:15.

Noon recess.

[fol. 910] Wednesday, January 2, 1951.

Afternoon Session

Cross-examination:

Mr. Nelson: I believe we recessed before noon, and your ruling, your Honor, was that I could question the witness about the Supreme Court decision.

The Court: You are permitted to question the witness concerning why Mrs. Roth was excused, but you are not permitted to read into the record any memorandum of any Supreme Court decisions.

Mr. Nelson: Well, your Honor, I am not quite clear on the question. Is that generally permissible to read that into the record?

The Court: No. We do not even permit lawyers to read opinions of the appellate courts to the jury.

Mr. Nelson: All right, your Honor.

Mr. Nelson:

[fol. 911] Q. Now, Mr. Musmanno, at the time you dismissed Miss Roth from the Grand Jury, you knew that your actions were illegal, did you not?

A. I not only did not know they were illegal, but I had every reason to believe they were legal, proper and desirable under the circumstances.

Q. And you thought, and it was your belief that you acted within your legal rights?

A. Yes, and I thought it was my duty to do so.

Q. I am talking now, did you at that time believe and have the understanding that you were within legal rights?

A. That is right. I thought I was acting——

Q. That is all. You have answered the question.

A.—I thought that I was acting within the Constitution and the law.

Q. It is true, is it not Mr. Musmanno, that this lady Miss Roth appealed against your decision to a higher court?

A. Yes.

Mr. Lewis: That is objected to. We are now getting into collateral matters.

Mr. Nelson: I understood the judge to say——

The Court: I said he might interrogate the witness concerning the reasons for the dismissal of Mrs. Roth; whether [fol. 912] or not they were valid reasons or not, we will have to permit him to pursue that. Objection overruled.

(Question read.)

Mr. Nelson:

Q. Yes or no?

A. Yes.

Q. And the lawyer who handled the matter in this case, was Hymen Schlesinger, right?

A. Yes, I think he took the appeal.

Q. If you can answer it all right, and if you cannot say so.

A. I think he took the appeal. He didn't notify me that he was taking the appeal, but I think he was the lawyer that handled the case.

Q. It is true, is it not Mr. Musmanno, that the Supreme Court ruled that you were wrong in the manner in which you dismissed this lady, and denied her her Constitutional rights.

Mr. Lewis: I object to that question. It has nothing to do with this case.

The Court: Objection overruled.

A. The Supreme Court reversed by decision, and that happens in other instances——

Q. All right, you have answered the question.

[fol. 913] A. ——I have been reversed in other instances. I don't think there is a judge in the Commonwealth of Pennsylvania——

A. ——I don't think there is a judge in the Commonwealth of Pennsylvania that has not, at some time, been reversed by the Supreme Court, begging the pardon of the presiding judge in this WWS Court.

Mr. Nelson: May I appeal to the Court that this witness not have any more right than I.

The Court: You have asked the question and he is justified in stating his explanation.

Mr. Nelson: I think at this time, when I am asking him questions, he is only making it harder for me. He knows it complicates matters for me when he makes these speeches.

The Court: That was not a speech. This is an explanation. This is an explanation of the reversal, and that accomplishes the purpose.

Mr. Nelson:

[fol. 914] Q. And when you get reversed by the Supreme Court, or any of the higher courts, is it your practice, or

the practice of the lower court judge to criticize the action of the higher court, publicly?

Mr. Lewis: That is objected to.

The Court: Objection sustained. That has nothing to do with this case.

Mr. Nelson: I have a right to go into this question.

The Court: The objection is sustained.

Mr. Nelson: I think I have a right to go into this. When he is asked about the higher court he goes on and explains it.

The Court: Objection sustained.

Mr. Nelson: I think I have a right to have an exception to your ruling.

The Court: You have an exception to all my rulings without asking for it.

Mr. Nelson: I think your ruling is prejudicial. I want to take exception to it.

[fol. 915] The Court: You have an exception to the ruling, Mr. Nelson, without asking for it.

Mr. Nelson:

Q. But you did, Mr. Musmanno, didn't you after the Supreme Court ruled, condemn their action in the public press?

Mr. Lewis: That is objected to for the same reason.

The Court: Objection sustained.

Mr. Nelson: Just a few more questions that I want to round out, in connection with the first matter we examined this morning, your Honor. I won't be long.

The Court: You mean

Mr. Nelson: The first and second points that I went through, the private citizen matter.

The Court: All right.

Mr. Nelson:

Q. Is it your answer, Mr. Musmanno, that you didn't discuss this case with the presiding judge before the case started?

A. Which case are you referring to?

[fol. 916] Q: This case here, my case, my trial?

A. I presided, as I said that morning and then absented myself from Court room No. 1 so that there would be no contact with the prospective jurors, or witnesses. Judge Montgomery took over and presided in my stead, and as presiding in Court room No. 1 it came about that he took charge of the panel of jurors that had been assigned to try the Nelson case. So, he thereby became the judge to try the case.

The Court: Mr. Nelson wants to know whether you requested me, to come in there, or whether I was assigned by someone else. And I was requested by you to take over for the reasons you have assigned.

The Witness: That is right.

The Court: That you did not want contact with the panel of jurors, and since I was assigned regularly to criminal court, you asked me to take your place in Court room No. 1, which I did.

The Witness: Yes, and prior to that I spoke with Judge McNaugher, who is the President Judge, and asked him what my procedure should be, and he recommended that I do that.

[fol. 917] Mr. Nelson:

Q. And is your answer, which I put to you regarding the prosecutor in this case, Mr. Cercone, is your answer—I want to get it clear—that you had made no request whatever that your nephew be the prosecutor in this case?

A. That is correct.

Q. All right.

A. Mr. Rahauser did that of his own volition.

Q. Did you object to the fact that one of your family relatives was being assigned to this case?

A. No. He has his life to lead and his profession to follow. I have no jurisdiction over what he does.

Q. You pulled no strings whatever, one way or the other, right?

A. I made no request and made no objection.

Q. All right. One more question. You said that you did know something about an organization called DABC?

A. Only from what I read in the public print.

Q. Did you know, or don't you know, that that organization has, as one of its programs, one of its planks of the program, to arrest and try me on sedition?

A. No, I was not aware of that.

Q. You did not know that?

A. No. I acted independently of any organization of that character.

Q. You never heard any of their speeches on the stand, or read their publicity in the press?

A. I had seen some reference to it in the press, but I have not had any association with any organization of that [fol. 918] kind.

Q. So, you don't know, of your own knowledge, whether this organization was the one that originally began to start a campaign to get me arrested and tried on sedition?

A. I don't know whether that happened or not.

Q. One more question regarding your time in Italy. Is it true, or is it not true, that the policy of the Italian government was that children who were born to Italian parents, no matter where they were, they were Italian subjects?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson: I think it is admissible. I think it is an important point, Your Honor. I have another question to ask on that. Otherwise you shut me off.

The Court: I will have to shut you off on that question. The objection is sustained.

Mr. Nelson:

Q. Well, is it true, or it is not true, that the Italian fascist government followed the policy of what is known as "Dual Citizenship," do you know anything about that?

Mr. Lewis: That is objected to.

[fol. 919] The Court: Objection sustained.

Mr. Nelson:

Q. Is it true, or is it not true, Mr. Musmanno——

The Court: Ask him whether he subscribed to any other government, if you want to, if that is what you question is.

Mr. Nelson: No, that is not my question.

The Court: I am sorry. I thought I was interpreting your question.

Mr. Nelson: No, Your Honor, that is not my question. My question, if it was clarified, and it could be clarified in a few sentences—I don't intend to dwell on this matter, I want to show, Your Honor—I want to make an offer of proof against your ruling. I think that I have a right to do that.

The Court: Very well. Come up to side bar and we will see what your offer is.

(At side bar.)

Mr. Nelson: I want to show at this point, this "dual citizenship policy" of the Italian government, and I believe also the fascist government of Germany, and the Jap-[fol. 920] anese government, too; the general policy of the Italian, Japanese and German governments, that the parents were subjected to the particular rule in the "mother country," let us say; and I want to show as such that Mr. Musmanno was bound by this rule, and practically would have been a subject to military training, and other such things as the Italian government at that time wanted, and I believe it is an important question. I would like to have this question asked and answered.

Mr. Lewis: That is objected to as incompetent, immaterial and irrelevant. It has nothing to do with the issue in this case at all.

The Court: You may, if you can ask the question directly to this witness whether he is influenced by any policy of the Italian government. I am not going to get into what is or what is not the policy of the Italian, German or Japanese government. It may go to show any motive, interest, bias or prejudice on the part of a man who is offered here as Commonwealth witness.

[fol. 921] Mr. Cercone: The issue here is whether this man advocated the overthrow of the government by force and violence. He cannot go into these other matters.

The Court: If you want to ask if he knows of any dual

citizenship policy of the Italian government, you may do so.

Mr. Nelson: Very well, Your Honor.

(End side bar.)

Mr. Nelson:

Q. Do you know, Mr. Musmanno, whether or not the Italian government, at that time, followed a policy that was known as "dual citizenship policy," which was binding on children of Italian ancestry, to be subject to the Italian crown, or dictator of the Italians? Do you know of any such rule, or any such policy at that time?

A. It was true of most European countries, not only Italy——

Q. I am asking about Italy; that is all I want to know. I think the Judge cautioned me and I don't want to go into Germany or Japan.

The Court:

Q. Do you know of any policy in Italy to that effect?

[fol. 922] A. I'm not aware of their policy.

Mr. Nelson:

Q. You didn't know? Is it your answer that you didn't know, even though you were a lawyer and studied law, that you didn't know that there was in existence at that time, a policy which made children of Italian descent, or parentage, subject to Italian government?

A. Well, you were asking me about the policy.

Q. I mean the law. Let us go to the law.

A. I do know, as a fact, that the Italian government, as was true with most European governments, assumed that they had the right to call into military service the children of ex patriates of that particular country.

Q. The answer is that you did know?

A. I knew that it had happened, but I don't know how that applies to me, or what it has to do with the case.

Q. But had the Italian government, or Mussolini, which later declared war on the United States, had you been there at that time, you would have been bound to go into the military service, wouldn't you?

A. I was there over a year and I wasn't molested. I was an American citizen. I had served in an American uniform before I went over, and I had served in an American uniform after that time.

Q. I am asking you a question. Let us say, not you, but other people.

The Court: I said that you would have to limit it to this [fol. 923] witness, whether he was affected by any such policy.

Mr. Nelson: All right.

Mr. Nelson:

Q. Is it true, or is it not true that you would have been subjected——

The Court: Not would have been. "Were you in any way affected by it?"

Mr. Nelson: I do not understand, if the Court please.

The Court: I said make it direct to the witness: Was he affected in any way by the policy as it existed?

Mr. Nelson: That is not my question; it is your question, Your Honor.

The Court: I am limiting your question, and when you get into the conjectural, I am sustaining the objection to it.

Mr. Nelson: All right, Your Honor.

Mr. Nelson:

Q. Let us say that if you had been there in 1935 when the Italian government declared war on Ethiopia, wouldn't [fol. 924] you have been bound to be drafted into the Italian Army?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

The Court:

Q. When were you there? You were there in 1924 and '25? Were you in any way affected by any such a policy or law at that time?

A. In no way whatsoever. I traveled freely, attended every institution.

Q. Were you affected on any of your other visits to Europe by any such policy or law?

A. No, never. I have been to Europe four or five times. Never once was I in any way molested or affected about what you are talking about, which seems to me to be quite ungermane and irrelevant.

Mr. Nelson:

Q. The time you went over to the Communist Party headquarters, on the 31st of August, I believe you testified that you were accompanied by Mr. Cvetic?

A. That is right.

Q. It was after your trip to the headquarters of the Communist Party, on the 31st, that you filed a petition in this Court asking that the offices of the Communist Party be padlocked?

A. Yes, and I did it for a purpose.

[fol. 925] Q. I am not asking you that question.

A. If you don't want to know why I did——

Q. I am asking if you did or did not?

The Court: He said that he did. Proceed.

Mr. Nelson: That is all I asked.

Mr. Nelson:

Q. You knew that such action on your part, of closing the offices of a minor political party, was illegal?

A. In the first place, the Communist Party is not a minor political party; it is not a political party at all. I can't answer your question when you include something in it that is not factual at all.

Q. All right. I will reframe the question. You knew that you were acting illegally; that there was no law under which you acted when you asked and secured in this Court an order to padlock the offices of the Communist Party?

A. The fact that the order was secured in Court shows that I did not know it was illegal, nor was it illegal as I viewed the situation at the time.

Q. It wasn't because you were quite well acquainted in the surroundings around here, that you were able to get what other people could not get, was it?

A. I don't quite get the drift of your question. If you

are endeavoring to infer it was done through some kind [fol. 926] of association with a jurist, I want to condemn that categorically and criticize you for making such an unjust, unfair and improper inference.

Q. You are asked to answer questions here and not make speeches here.

A. Well, you threw a speech in here.

The Court: All right. The answer is——

Mr. Lewis: If you want to make a speech, you should hire a hall; that is what you are doing yourself.

The Court: Your answer is no, is it Judge Musmanno?

Mr. Nelson: Mr. Lewis, I am defending myself against your frame-up, that is what I am doing.

The Court: Gentlemen, gentlemen, address your remarks to the Court as I have instructed you before.

Mr. Nelson: I am sorry, your Honor, but this man addresses remarks to me and he is not stopped when he makes remarks to me.

[fol. 927] The Court: Yes. We have been endeavoring to stop the witness, as well as you and the District Attorney.

The Court:

Q. We understand the answer to be no, that the petition was filed and the order was secured without any influence on your part as a jurist in this Court?

A. That is right.

Mr. Nelson:

Q. Do you know, or don't you know——

The Court:

Q. Incidentally, who did issue the order?

A. Judge Thomas Marshall.

Mr. Nelson:

Q. Do you know, or don't you know that an appeal was taken against your action to a higher court?

A. Yes, I do know.

Q. And you know, do you not, that the higher court, which is the State Supreme Court, again stated, or re-

buffed you and stated in fact—since I can't quote the letter, or the statement of the Supreme Court—that you acted wrong in the matter?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

[fol. 928] The Court:

Q. Was the action of Judge Marshall sustained or reversed?

A. The action of Judge Marshall in that instance, was reversed. I had no opportunity to explain my position at that time.

Mr. Nelson:

Q. That is all. It does not call for a speech.

The Court: The District Attorney may develop any of those angles on re-direct examination, if he deems it necessary.

Mr. Nelson:

Q. Well, as a Judge of this Court, wouldn't you know the same set of facts are precedence in higher courts, pertaining to such matters, that the Supreme Court based its opinion, or against you—I mean, weren't you familiar with those?

A. I was familiar with situations where crimes were being committed, and in order to halt the continuation of that crime I filed that motion to have the premises padlocked. In addition——

Q. That is all. You have answered the question.

A. In addition I wanted to have the premises padlocked in order that the eventual jury would have an opportunity to see just what was there in the headquarters, and it was as much of a protection for the defendant as it was for the Commonwealth.

Q. Didn't you testify here, Mr. Musmanno, that you could have gotten any piece of literature you wanted in [fol. 929] there; bought it and brought it here? You know that no one there felt they were committing a crime? You know you could have gotten all the copies of that literature

you wanted and brought it before the jury, if that was your purpose?

A. You are asking me if I knew what they knew. My impression was that they knew they were overthrowing this government by force and violence, and that is reason I took the action I did.

Q. That is why they sold you pamphlets free, without any question?

A. Not free, they charged me for it.

Q. All right. What were you going to do, take them out free?

A. Well, Dolsen did give me one very beautiful book free of charge, in which Stalin was glorified as has no American president ever been, and he caressed the picture and told me how beautiful it was, whereas there was nothing in there——

Q. I am sure that is one mistake Dolsen made.

A. ——that there was nothing in America like that.

Q. Will get up and enact it now as you did at the first trial?

The Court: All right now, gentlemen. All we want are questions and answers. We want no acts and no speeches.

Mr. Nelson:

Q. At the time you took those documents from the Communist Party headquarters, on the 31st of August, what did you do with them?

A. They were carried by Mr. Marshall, City detective, [fol. 930] to my chambers and then the package, not being loosened, was brought back here to the District Attorney's office.

Q. Is it not customary for police officials, when they pick up evidence, to take it over to the judge, or the judge who is acting as private prosecutor, or isn't it the practice that it should be taken over to the District Attorney's office, or the Sheriff's office?

A. Well, Mr. Marshall wasn't entirely familiar with what was going to take place there, and as soon as I informed him to take it to the District Attorney's office it was then taken to the District Attorney's office.

Q. In this case you not only acted as private prosecutor,

did you not, but you also acted as police official and keeper of these records?

A. I did not act as a police official, nor as keeper of the records, as you call it.

Q. Well, how many times in your experience as a judge, when people had to be apprehended for anything, did you do the same thing as you did in this case?

Mr. Lewis: That is objected to as repetitious.

The Court: The objection is sustained.

Mr. Nelson:

Q. I think you testified, Mr. Musmanno,—I am not sure whether this time or before—if you did testify before you [fol. 931] need not answer this question—that you saw me for the first time, that is in Court room No. 2, I think it was—let us say in this Court house—on August 31st when we had the preliminary hearing before Judge Marshall Thompson.

A. I don't recollect having testified to that effect. As a matter of fact I had seen you before. I said the first time I had any conversation with you——

Q. Well, all right. At the time we had the preliminary hearing, it was held before Judge Marshall Thompson?

A. That is right.

Q. That was just a few days before your election campaign was scheduled on September 5th?

A. My campaign began many months before. It had nothing to do whatsoever with the prosecution of this case. It had nothing whatsoever to do with it. Just as far removed from it as Asia and the moon.

The Court: What day was that, September 3rd or August 31st?

A. The hearing was September 1st, the day after.

Mr. Nelson:

Q. At the time of the hearing was held, Judge Marshall Thompson's room—the room was packed with people, wasn't it?

A. There were people in the Court room; I don't know

whether it was packed, there were people there just as there are today.

[fol. 932] Q. If I show you a newspaper clipping which would show——

Mr. Nelson: I don't know how to introduce this, your Honor.

Mr. Nelson:

Q. If I show you a newspaper clipping, to show where references were made to the crowded court room; that it was packed and there was "whooping" in the Court room, there was "whooping" in the Court room by the spectators would you deny that?

A. I think you did a great deal of whooping yourself throughout the entire proceeding.

Q. You don't want to stick a dagger into me and expect me to lay down and let you?

A. Did I have a dagger?

Q. Yes, you had a dagger. Your election campaign was the dagger.

The Court: All right gentlemen, don't tax my patience, please.

Mr. Nelson: I am sorry, your Honor, but the man here takes advantage and makes side remarks that he has no right to make.

Mr. Lewis: It is a question who made the "whooping" and Judge Musmanno said that Nelson did.

A. Now, you spoke of a dagger, and you know there [fol. 933] was no dagger. The people do the electing, not daggers, as the country that you seem to care for.

Mr. Nelson: I move to strike this last remark.

The Court: The motion is granted.

Mr. Nelson:

Q. It is a fact, is it not Mr. Musmanno, that the bail question in my case was being decided by Judge Marshall Thompson?

A. Well, he in the first instance handled that, but, of course, other judges came into the discussion later on.

Q. And he, after the hearing on September 1st, took it under advisement over night, and the next day made his ruling, stating that my bail would be $10,000.00; right?

A. I think that was the chronology of events.

Q. Now, from the time Judge Marshall Thompson made his decision that my bail shall be $10,000.00, or did you know this—that from the time he made the ruling on that, and the time my friends went over to the County clerk——

The Court: Clerk of Courts or the bond clerk in the District Attorney's office.

Mr. Nelson: Thank you, your Honor.

Q. —you sent a messenger over to the man and told him [fol. 934] not to accept bail at $10,000.00 because you were seeking a higher bond for me; right?

A. No, it was not. What I did was to file a petition calling attention to the Judge——.

Q. You did that later, Mr. Musmanno.

A. No, no, that very day, and the records will sustain me, and in that record I pointed out that you were too dangerous a character to be released on $10,000.00 bond, and when that petition was filed a copy was immediately served on the Clerk of Courts and that withheld——

Q. Mr. Musmanno, is it true, or is it not true that before you had to file those papers legally, which you had a right to do, if you wanted to, you used your influence in this Court room to tell the woman in charge over there—the clerk—not to accept my bail, to hold it up for awhile, until you got your petition filed to increase my bail?

A. That is untrue. I prepared the petition, a copy was served on the clerks involved, and what followed, followed.

Q. That happened the next day, Mr. Musmanno?

A. As a matter of fact, you were to go——

Q. But I was to go to jail just because you saw to it that my legal right, which was to place $10,000.00 on the basis of Judge Marshall Thompson's ruling, I could have been released but you insisted that you are going to do something else and they in this regard—when I say they, I mean the [fol. 935] clerks and the staff—listened to you and not to Judge Marshall Thompson?

A. Mr. Nelson, I would have to amend your memory in this respect: you were to be in Court here at 3:30 in the

afternoon, so that if bail was refused you, it was only a matter of an hour or two. So, it wasn't the next day, it was that very same day.

Q. That is rig... You prevented me from going out that day, and the next day you were able to file your petition?

A. No, it was filed the same day.

Q. All right, that is your story.

A. It is a fact.

Q. You remember, don't you, when you testified here before Judge Marshall Thompson, you were sitting over there where Mr. Lewis sits—that is after you got through testifying—Mr. Sanes sat behind him, and I and my attorneys were sitting on this side; right?

A. Well, I don't recall which chair I was sitting in. I was not sitting at the counsel table.

Q. And you recall, that is on the 2nd of September, when we came here to hear the decision of the judge, Judge Thompson, that you got up there and made a speech that I was a dangerous character, and that the bail had to be raised to $100,000.00, and you stated that while I was sitting over here, the day before, I attempted to assault you in this Court room; didn't you say that?

A. It is a fact you did attempt to assault me.

Q. You mean I came over here, jumped across the table? [fol. 936] A. No, I was standing right there, approximately behind you, considering where you are now standing, addressing the Court, and you leaped up from the chair from where the lady is now sitting, and attempted to strike me in the back, and the only reason you weren't able to complete your assult upon me, is because a County detective, and Jos Becker immediately came to my assistance and restrained you, and that is the only thing that saved me from being struck in the back by you, Steve Nelson.

Q. When you got through making that statement, is it true, or is it not true that I asked Judge Marshall Thompson, who sat there and could see everything, "Judge I will leave it to you to say did you see me attempting to assault that man?" And he said, "Gentlemen, gentlemen, let us get along."

A. He didn't want to tell you that——

Q. He didn't want to call you a liar in this Court room, that is the trouble. Now, he did call you that.

The Court: Now gentlemen, wait a minute.

A. Judge Marshall Tompson did not call me a liar.

Mr. Nelson:

Q. He didn't want to call you a liar, of course not.

The Court: You don't know whether he wanted to or not.

A. You attempted to strike me in the back while I was [fol. 937] addressing the Court. That is the respect you had for the Court.

Mr. Nelson:

Q. That is as much truth as you told here all morning, which is nothing.

Mr. Lewis: I ask that that remark be stricken.

The Court: Your motion will be granted and we admonish the defendant to limit his remarks to the Court and ask questions of the witness.

Mr. Nelson: Your Honor, I want to refresh something that occurred in connection with this——

The Court: Well, you may. You may ask all the questions you see fit that are material, but don't make speeches; don't make statements concerning them. When it comes your turn to testify you may then testify about them, but, when asking questions you are not privileged to testify yourself. This is your opportunity to cross-examine the witness on what he has testified to.

Mr. Nelson: All right, your Honor.

[fol. 938] Mr. Nelson:

Q. When you got through that day making that statement, and Judge Thompson refused to come to your aid, I said in that Court room, did I not, that you were a plain liar, didn't I?

A. No, you did not say that. You said I was a damned liar.

Q. All right. I will take your correction.

A. And Judge Thompson couldn't come to my aid because he is 80 years of age, but Joe Becker, who is younger, and a County detective and the sheriff's assistants, on duty here, restrained you and threw you down, and that is all contained in the petition filed the next day and to which you did not make any objection.

Q. When people call you a liar, what do you do about it?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

A. I wouldn't contaminate myself by touching you.

Mr. Nelson:

Q. Of course not. You knew you told a lie then and you wanted to get away with it, and you got the headlines in the newspapers.

Mr. Lewis: That is objected to.

The Court: Objection sustained, and we will not pursue that any further, Mr. Nelson.

Mr. Nelson: All right.

[fol. 939] The Court: If you want to talk about the increase of the bond to $100,000.00, you may do so.

Mr. Nelson: All right.

Mr. Nelson:

Q. Then after that you saw to it that the Courts here placed a bail on me of $100,000.00, didn't you?

A. I didn't see to it. I advocated it and the Court

Q. All right.

A. I would like to have an opportunity to finish.

The Court: All right, Mr. Nelson. Give the witness an opportunity to finish his answer.

A. And the Court, in the administration of justice, after hearing long argument in your behalf, by counsel defending you, and by many speeches made by you, then finally decided $100,000.00 was the amount which should be set. Incidentally, your counsel filed long briefs attempting to hold that bail down to the original sum of $10,000.00

Q. All right.

A. It was not because of what I did, but what the Court did.

Mr. Nelson:

Q. Just the point in my question, Mr. Musmanno. The legal and legitimate bail in the case, you knew, should [fol. 940] have been around $10,000.00, because that was on the papers served on me—on the warrant served on me—which stated my bail to be $10,000.00.

A. It very often happens that the original bail is a low one until the preliminary hearing takes place, and then when the evidence reveals that the menace to society of the defendant involved, is of such a character that the original bail is not adequate, then the Court raises the bail which it did in this instance.

Q. I see. And then you know, don't you Mr. Musmanno, that after you succeeded in getting the bail raised in this Court, two other judges sat on the matter, Judge Thomas Marshall and Judge Ellenbogen, and they finally set bail at $50,000.00?

A. That is correct.

Q. They thought that was reasonable; right?

A. They evidently did or they would not have set it in that amount.

Q. They didn't quite agree with you to set it at $100,000.00, but set it at $50,000.00?

A. Yes, some judges disagree with my——

Q. Yes. Then you know, don't you, that I had to appeal to against your arbitrary and unreasonable demands, to place me under such high bail——

A. Now, you throw into your question "arbitrary and unreasonable demands" without giving me an opportunity to answer those adjectives.

Q. Wait a minute.

A. And then you go on to an interrogation without an [fol. 941] opportunity to explain that you are absolutely wrong in using adjectives of that character.

Q. All right. I will reframe the question. I appealed against your decision to a higher court?

A. But, it was not my decision, Mr. Nelson. It was the decision of Judges Marshall and Ellenbogen.

Q. But you requested it; right?

A. Yes, I requested it.

Q. You know that I appealed this thing, this action of yours, to a higher court?

A. That is right.

Q. And you know, don't you, that the higher court stated that your demand for such bail was unreasonable, and should be reduced to $10,000.00?

A. No, I don't think they referred to my demand as being unreasonable at all.

The Court:

Q. Was the bail reduced by the appellate court?

A. Yes.

Mr. Nelson: You see the judge understands the question without any difficulty.

The Court: No, I just understand one phase of it. I am trying to simplify it as much as I can.

[fol. 942] The Court:

Q. Was the bail reduced?

A. Yes, it was reduced to $10,000.00.

Mr. Nelson:

Q. All right.

A. That does not make my demand unreasonable.

Q. This again was in the midst of your election campaign, wasn't it, Mr. Musmanno?

A. Well ——

Q. It was within two or three days.

A. Yes, it happened to be about that time, but there was no association between the two whatsoever.

Q. All right.

A. As a matter of fact, this case delayed me considerably in my election campaign, because I couldn't get out throughout the case.

Q. All right.

A. It hindered me considerably.

Q. All right. Now, I show you here an editorial from the Pittsburgh Press, September of that year, 1950, in which ——

Mr. Lewis: That is objected to.

The Court: Show Mr. Lewis the editorial.

Mr. Nelson:

Q. Did you read this, Mr. Musmanno?

A. Yes, but if you are going to read the editorial I must [fol. 943] have an opportunity to comment on it myself.

The Court: It is not offered in evidence.

Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, in this editorial, the first paragraph of it is very brief——

A. Well let me read it, the other paragraphs too, Mr. Nelson.

Mr. Lewis: I object to him reading any editorial whatsoever, as incompetent, immaterial and irrelevant and has nothing to do with this case.

The Court: You may not read any of the editorial. If you want to ask him a question about it, you may.

Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, that the Pittsburgh Press commented "that Judge Michael A. Musmanno——"

A. Are you going to read it now? You have your eyes glued on it?

Q. "That Judge Michael A. Musmanno's sudden interest in this case coincided with the opening of his campaign for Lieutenant Governor——"

A. Yes, and it also commented on me throwing you into the hoosegow; it said it was a very fine thing to throw Communists like you into the hoosegow.

[fol. 944] Q. Yes, I can understand the press agreeing with you on that.

A. Well, you are reading it.

Q. Even the Press, I want to show you Mr. Musmanno, stated that you used this case to advance yourself politically.

A. No, it didn't.

Q. All right.

A. Just a minute now.

Q. All right.

A. The editorial said, "It coincided", and I said before it was a coincidence because I started fighting Communism 25 years ago.

Q. That is right.

A. And not during any election campaign.

Q. We heard that about 50 times now, but you have nothing to show, Mr. Musmanno, that you ever introduced a bill, ever prosecuted Communism until it became convenient for you to use the "Red scare" now, the war hysteria, and get yourself elected to a higher office.

A. In 1929 I presented a bill in the Legislature to outlaw the Communist Party, and send all the Communists back to Russia if they were convicted and remained in prison until their term expired. In 1928 I fought the Communists when they came in here to Western Pennsylvania and attempted to subvert the purpose of the United Mine Workers and formed a Communist miners union and preyed upon the misery of the miners who were on strike. In 1928, I did that, and then when I was in Europe——

[fol. 945] Mr. Nelson:

Q. All right, Mr. Musmanno.

A. When I was in Europe I did that——

Q. All right.

The Court: All right, gentlemen, one at a time.

Mr. Nelson: I asked him this morning, and I asked him before if he, has he got a bill to show.

A. Do you want to see the bill?

Q. Yes.

A. Let me have that briefcase there. I will show you a Resolution I introduced.

Q. Now Mr. Musmanno, you know the difference between a resolution and a bill in the Legislature. I said a bill in the Legislature. Now, you know the difference between a resolution and a legal bill that is to be acted upon by the Legislature.

Mr. Lewis: Mr. Nelson is going on technicalities, if the Court please. Whether it is passed or not makes no difference.

The Court: The witness is busily engaged looking for data here, and the question, or statements made by the [fol. 946] defendant here, at this time, are improper, so they will be stricken from the record.

Mr. Nelson: I say, your Honor, I will let him introduce it if they are a bill.

The Court: You don't know what they are yet. You have asked him whether he had anything.

A. In 1929 I introduced at a convention of the American Legion in Scranton——

Mr. Nelson: That is objected to, if your Honor please. I want to see that first.

The Court: What is your question? Do you want to know whether he introduced any bills into the Legislature?

Mr. Nelson: That is right, your Honor.

A. I am only using this as an introduction to what I did in the Legislature.

Mr. Nelson: Well, your Honor, that is not the question. If Mr. Lewis wants to do that when he has him as his witness, he may do so.

A. All right now, I will read the bill which I introduced in the Legislature March 12, 1929.

[fol. 947] Mr. Nelson:

Q. Let me have the bill before you read it.

A. "An Act declaring the Communist Party illegal and penalizing all members thereof, depriving them of citizenship and provided for deportation in certain——"

Mr. Nelson: Just a moment. Before you read it I want to see it.

The Court: Just a minute. If you want to offer this in evidence, have it marked, submit it to the defense, let him see it; that is an exhibit, have it marked as an exhibit, submit to the defendant, and if there is no objection then it may be read.

Mr. Nelson:

Q. Is there any record of that in any of the Pennsylvania Legislature?

A. You, who have been going through my record, can find that out. I have here my record.

Q. Well, I am asking you a question. I think you ought to answer that.

The Court: He may not know.

Mr. Nelson: Well, I am asking him: Would it be in the record of the Legislature after it is introduced, whether [fol. 948] it is approved or disapproved; would it be on record anywhere in the records of Legislature.

A. Let me have my records. I have here copies of other bills which I introduced in the Legislature against the Communist Party. I have here communications with the Department of Justice about the Communist Party, down through the years from 1925 and 1926. Do you want to look at them?

Q. No. Don't wave your hands and act Mr. Musmanno, and get red under the collar. Answer my question.

A. You are red all the way through, Mr. Communist.

Q. I think you ought to know better how to behave on that stand, Mr. Musmanno.

A. You are the one that is making the accusations.

The Court: All right, recess the Court.

(Recess.)

After Recess

MR. MUSMANNO resumes the stand and testifies as follows:

Mr. Nelson:

Q. You state, Mr. Musmanno, that this copy of your Bill was introduced by you in the Legislature in 1929. Do you remember what session that was, whether it was a special [fol. 949] session.

A. No, 1929 session.

Q. Did the Bill come up for vote?

A. No, it got nowhere.

Q. It was not voted on?

A. No.

Okay, that is what I wanted to know.

A. No, it was not debated, or anything.

The Court:

Q. What happened? Was it referred to a committee?

A. It was referred to the judiciary general committee. It lay in committee and the chairman would not take it out of committee and it died.

The Court: Is that marked Exhibit No. 161?

Mr. Nelson: Yes, Your Honor.

Mr. Nelson:

Q. This Bill you introduced, died for the want of a second, you may say, or as said in union meetings?

A. That is right.

Q. And you re-introduced that Bill 32 years later when you ran for Legislature?

A. No, in the 1931 session I brought it up and got the same kind of a reception.

[fol. 950] Q. In that period, known as the 1932, or known as the "Roosevelt period," you never thought of introducing it again?

A. I was not in the Legislature after that.

Q. You didn't ask your friends?

A. I certainly did. I asked friends in the Legislature. I asked friends right down through the years.

Q. You said yes, that is all. But when it was introduced again it was again defeated, right; or was it ever voted on?

A. Well, it finally passed this year.

Q. I am talking about before this time.

A. It was never voted on.

Q. Mr. Masmanno, one more question. So far as the average citizen is concerned, he would read the Legislative Journal, and he would not have any way of finding out that you introduced this kind of a Bill unless you personally showed it to the person, right? There was no record of it in the Legislature, in the library of the Assembly?

A. I don't know whether there is or not. I know, it was presented and died in committee as you said, using your phrase, for the want of a second.

Q. And then you had to wait for this "Red scare" and "war hysteria" when you ran for Lieutenant Governor, to get it finally pushed through the Legislature; right?

A. No.

Q. It didn't pass before?

[fol. 951] A. Mr. Nelson, you are constantly endeavoring to suggest that I became interested in fighting Communism recently. It has been a long campaign for me. And for you to make that kind of a statement, I want an opportunity to tell you what I did since 1926. If you are going to insist upon that line of examination, then I want to have an opportunity of showing just what I did down through those years. I have records here.

Mr. Nelson: Just a minute. I want to appeal to the Court. I asked a question, and the question was whether or not he introduced a Bill in the Legislature. He answered that he didn't.

The Court: What you want to do is object to any further answer?

Mr. Nelson: Yes, Your Honor. I don't want any stump speeches in any direction here.

A. In the last 25 years, not only in 1950——

Mr. Nelson:

Q. What I am saying now is, did you introduce the Bill and you said no.

A. Yes, in 1929 and 1931.

Q. And it was voted on?

A. It did not come to a vote, Mr. Nelson.

[fol. 952] Q. It did not come up to a vote, and that answers that question?

A. And then you said I did nothing more until I became a candidate for Lieutenant Governor and that is absolutely incorrect.

Q. I believe my phrase was that you did not ask any of the legislators to re-introduce that Bill, while you were not in the Legislature?

A. I did answer that, that I did.

Q. During 1950, we had the State elections in the State, at the time when you ran for Lieutenant Governor; right?

A. That is right.

Q. And at that time you were a Judge of this Court?

A. That is correct.

Q. You didn't resign your post as a Judge, did you, while you ran for another office other than a judicial office?

A. No, but I gave up my salary.

Q. I am not asking you about your salary. You made plenty of dough while you were judge.

The Court: Wait a minute.

A. I didn't make plenty of dough. I am a poor man right now.

The Court: The remarks of the defendant and the witness will be stricken from the record.

Mr. Nelson:

Q. The question is that you did not resign and your answer was no; right?

[fol. 953] A. But I did refrain from acting as a judge.

The Court: The original question is objectionable. Strike the question and the answer out. Whether he did or did not resign has nothing to do with this issue.

Mr. Nelson: I believe it does, Your Honor.

The Court: The ruling is that it does not. The objection has been sustained and we will grant you an exception.

Mr. Nelson: I will take an exception, but I believe this line of questioning was permitted in the first trial.

The Court: We will not permit it in this trial.

Mr. Nelson: That is taking advantage of me because I have no attorneys here.

Mr. Cercone: You have taken time to confer with a lot of lawyers.

Mr. Nelson: I have a right to confer with anybody I want. Will the Court rule on the motion to strike Mr. Cer-

[fol. 954] cone's remark.

The Court: Yes, Mr. Cercone's remarks will be stricken from the record.

Mr. Nelson:

Q. Then Mr. Musmanno, is it a fact or is it not a fact that at the time you ran for Lieutenant Governor there were bodies known—one body known as the American Bar Association, which condemned your lack of judicial ethics?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson: Well, Your Honor, I have quotations here to show.

The Court: I don't care whether you have or not. This line of questioning is not proper cross-examination. The objection is sustained and an exception noted.

Mr. Nelson: It was done during part of this case.

The Court: I don't care. I have sustained the objection and we will hear no further questions concerning the matter.

[fol. 955] Mr. Nelson: You mean I can't ask him any further questions? I want to show his lack of judicial ethics, Your Honor.

The Court: I have ruled that it is not a matter of ethics in this case.

Mr. Nelson: I take exception to your ruling.

The Court: You have an exception to all my rulings without asking for them.

Mr. Nelson:

Q. Do you know an individual by the name of Hymen Schlesinger?

A. I know who he is.

Q. He is a lawyer, right? A lawyer in this City?

A. Yes.

Q. And he is the lawyer who represented me on these previous occasions that we were discussing this morning, on several of those occasions?

A. You had several attorneys. Mr. Schlesinger and Mr. Davis from Cleveland represented you, and occasionally you represented yourself; you got up and made speeches and cross-examined me. I really don't know who represented you.

Q. The question is you know Mr. Schlesinger, and he was attorney of record of that trial, you know that?

A. That is right.

Q. He represented Miss Alice Roth in her case?

[fol. 956] A. Never before me.

Q. That is in these hearings before the Supreme Court?

A. I know that as a matter of general knowledge.

Q. He represented several people you know, who were fired from their jobs because they were fingered by your friend Matthew Cvetic, is that right?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson:

Q. Well, you know, don't you that he represented me on the bail question?

Mr. Lewis: That is objected to.

The Court: Objection overruled.

A. I think he did.

Mr. Nelson:

Q. You know the Supreme Court upheld the appeal on my behalf through Mr. Schlesinger, don't you?

A. On what?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson: I have a number of questions to bring up.

[fol. 957] I don't know how to do it as a lawyer.

The Court: We will sustain the objection if you are doing it wrong.

Mr. Nelson:

Q. The Supreme Court condemned you?

A. They did not condemn me.

Q. It criticized the lower court which acted on your request?

A. It didn't criticize the lower court, it reversed the decision.

Mr. Nelson: I don't know how to put these things, Your Honor. When I say "higher court reverses," I mean slapped him down. That is the way I use the phrase.

Mr. Nelson:

Q. Likewise, you know don't you, that he represented me on the Communist Party padlock case?

A. Yes, I think he did.

Q. And also on the search and seizure?

A. On the search and seizure you had two or three lawyers, and then you jumped into the melee yourself, so I don't know who was your attorney.

Q. In both instances the Supreme Court, in the padlock and search and seizure cases, again reversed your request and upheld my Constitutional rights?

[fol. 958] A. They did not reverse the search and seizure. I don't know why you say that.

The Court: We have been through the padlock proceedings. What was done with the search and seizure case?

Mr. Lewis: Nothing.

The Court: Was there any appeal taken to the Supreme Court?

Mr. Nelson: Yes, the Court did not rule on the question.

Mr. Nelson:

Q. Then Mr. Musmanno, you know don't you, or you knew that I was hurt in an automobile accident in the course of this trial, in which I suffered a severe injury?

Mr. Lewis: That is objected to. What has that to do with this case?

The Court: Just a matter of explanation why this matter is being tried.

A. That came to my attention and it was in the newspapers.

Mr. Nelson:

Q. It was Mr. Lewis upon your insistence, was it not, who [fol. 959] demanded that I be brought back to trial in a wheel chair, or on a stretcher, was it not?

A. I never made such a request.

Q. But your Mr. Musmanno, didn't you appeal to the Supreme Court of this State, asking that I be brought back from Philadelphia, from the hospital?

A. No, I petitioned the Supreme Court to have either your bail increased to $100,000.00, or to grant you no bail at all because the Communists in New York had escaped, having a bond such as you had.

Mr. Nelson: Now, your Honor, I move for a mistrial on the basis of these remarks. This man brought in matters prejudicial to my case, which he had no business to bring in.

The Court: Read the question and answer.

(Question and answer read.)

The Court: Motion refused.

The Court:

Q. Answer yes or no.
A. No.

Mr. Nelson:

Q. You did not appeal to the Supreme Court?
[fol. 960] A. You keep making assertions and statements that are not true.

Q. The Judge told you to shut up and I don't see why you should not answer the question.
A. I didn't hear his Honor so state.

The Court: I told you both to regard my rulings. I said it could be answered yes or no. Please proceed and ask the next question.

Mr. Nelson:

Q. Let me reframe the question. You did, did you not Mr. Musmanno, make an application to the State Supreme Court asking that the Court order me brought back to Pittsburgh? That is the question. The answer should be yes or no.
A. Well

Mr. Lewis: If you can answer yes or no.

A. I can't answer it yes or no.

Mr. Nelson:

Q. I would like to know whether anybody else could answer that question. It seems to me that the average witness should be able to answer it.

A. You keep implying certain things on which a negative or an affirmative answer would not be sufficient.

The Court: He said he could not answer yes or no. [fol. 961] Mr. Nelson: That is what I am asking.

The Court: He said he couldn't answer it yes or no.

Mr. Nelson:

Q. That is as to the fact whether or not you presented a petition to the Supreme Court, which is in substance asking that I be brought back to trial?

A. That is your interpretation. You are putting an interpretation on something that is proper. Let us get the petition I presented to the Supreme Court and read it.

Q. Did you ask the Supreme Court that I be ordered back to Pittsburgh, yes or no?

A. I can only answer that with an explanation.

Mr. Lewis: I would say that the petition should be brought in.

The Court: I will permit you to answer the question with your explanation of what you did ask, but not your reasons for the petition.

Mr. Nelson: That is my question. My question is simple. It could have been answered and we could have gotten along. [fol. 962] The Court: He said he could not answer yes or no without some explanation. I will permit him to explain his answer, but without giving his reasons he may have had for his petition, and that was the specific part as I understood you before.

Mr. Nelson: We will do this another way. This man refuses to answer and the Court protects him and I can't help it. I can only go along and ask these questions.

Mr. Nelson:

Q. The Supreme Court of Pennsylvania did refuse a petition, requested by you that I be brought back to Pittsburgh for trial?

A. Your questions cannot be answered without an explanation. I cannot answer that question yes or no.

Q. If you want the petition any time, that is up to you. That is not my question. I believe you would have no right to go into it. If you don't want to answer the question, all right. Did you, or did you not make an appeal to the Supreme Court, which was turned down, that I be brought back? You can answer that yes or no. Was there any such petition? Did the Supreme Court turn that down?

A. I will answer that with an explanation.

The Court: Answer the question.

[fol. 963] A. I did not petition in the manner in which you say. I petitioned the Supreme Court to increase your bail to $100,000.00, or such sum as the Court, upon investigation and inquiry would ascertain to be just.

Q. And that was in 1951 when you ran for the Supreme Court of this State; right?

A. Yes, it was.

Q. When you were campaigning, right in the middle of your campaign?

A. I can't help it if you do these things while I am a candidate. If you kill somebody while I am a candidate I cannot wait——

The Court: Wait a minute.

The Witness: I am sorry for having made that last remark.

The Court: Let us try to limit ourselves to facts here.

Mr. Nelson: I believe you should tell this witness not to make these prejudicial remarks. I move for a mistrial.

The Court: Your motion is refused. We are endeavoring to give you a fair trial here and will continue to do so. We will ask both parties, the witness and the defendant, to limit [fol. 964] themselves to questions that are proper and material.

Mr. Nelson:

Q. After the Supreme Court denied your request, Mr. Witness, is it true, or is it not true that you went to the Un American Activities Committee of the Congress and you made a similar request, Congress of the United States?

A. In the first place the question is rather ambiguous. The Un-American Activities Committee had no jurisdiction.

Q. You didn't discuss that with Congressman *Walter*?

A. Discuss what?

Q. This matter of my being brought to Pittsburgh?

A. I had a conversation with Congressman Walter.

Q. You mean this man that is now head of the House Un-American Activities Committee?

A. Yes. I talked with him and with the chairman, Mr. Wood, who knew you very well.

Q. I know that Ku-Klux Klanner knows me very well. I know him and he knows me.

A. I would like to defend Mr. Wood against that unfair remark.

The Court: We will defend no one here but Mr. Nelson. Proceed.

Mr. Nelson:

Q. Mr. Musmanno, it is evident that a judge and a lawyer should have known that he had no legal right to [fol. 965] drag a sick person from a hospital into a trial, just in order to satisfy his ego and to be able to blow it up into an election campaign.

Mr. Lewis: That is objected to.

The Court: Objection sustained.

A. These remarks are unfair and atrocious. I don't see why I should have to sit and suffer any such remarks. That certainly is not a question. It was certainly venting your spleen to its utmost. It was not a question at all.

Mr. Nelson: I move that these things be stricken.

The Court: We will not strike the remarks at all. The witness has a right to explain his feelings. We consider the answer as he has expressed it and have sustained the objection.

Mr. Nelson:

Q. When in the course of your campaign during 1951 — I don't know the dates — I was not here, but I believe you will

admit that Mr. Schlesinger had a client that he wanted to represent in your Court, and you hold him for contempt of Court?

Mr. Lewis: That is objected to as incompetent, immaterial [fol. 966] and irrelevant, and raising collateral issues.

The Court: Objection sustained.

Mr. Nelson:

Q. It is true, is it not Mr. Musmanno, that the arbitrary action on your part against Mr. Schlesinger was condemned by three judges of this Court, in open court?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson: Let me finish my question.

The Court: Objection sustained.

Mr. Nelson: This witness acted in an arbitrary manner and took the law in his own hands.

The Court: It has no bearing on the matter in issue here.

Mr. Nelson: It has a bearing on the attorney I had in the case, as the man who was attorney of record in my case.

The Court: Mr. Musmanno is a witness here, and Mr. Schlesinger would not be subjected to my jurisdiction.

[fol. 967] Mr. Nelson: But it was Mr. Musmanno, who threatened him, threatened to take away his rights as an attorney.

The Court: It has nothing to do with the conduct here. You may testify to that on your own behalf when you take the stand, but don't submit testimony here in the form of a statement, which you are not giving under oath.

Mr. Nelson: If you didn't rule as you did I could bring out things.

The Court: I have ruled that they are not relevant here.

Mr. Nelson:

Q. I will proceed to the next question. During 1951, during the months of June and July you were campaigning for the Supreme Court; right?

A. That is correct.

Q. During that time you made trips to various cities outside of Pittsburgh, including Philadelphia?

A. That is right.

Q. I am not asking you to be precise about this, but you were in Philadelphia during the month of July, were you not, 1951?

A. I was.

[fol. 968] Q. You were there for the purpose of your election campaign?

A. Yes, that was the primary purpose. I could have done some other things while I was there.

Q. I didn't ask you that.

A. I am telling you that. That question implied that I was.

Q. At the time you came to Philadelphia during July, could you fix the date by chance?

A. I was in Philadelphia a number of times in July.

Q. Maybe that will help you. When you were in Philadelphia, you inquired and apparently found out where I was staying, and you and two men walked into the apartment of my friend, where I was laying with a cast on my leg, a steel cast; is that right or not?

A. Well now, since you opened it up I must tell you, and I want to tell you what happened.

Q. I will reframe the question. Did you come into my house, or my friend's house where I was staying, at the time when you came to Philadelphia for your election campaign? Did you come into my house, yes or no?

A. Yes, I did.

Q. Did I invite you to come in?

A. You invited the officers with whom I came, to come in after we rang the doorbell.

Q. Before you came to Philadelphia did I write to you to come to my house?

A. We have never had that kind of correspondence, Mr. Nelson.

[fol. 969] Q. You did come into my house?

A. I went there with two city detectives. I had reason to believe you were lying about your physical condition and I wanted to find out with my own eyes.

Mr. Nelson: I tried to say that this man takes the law into his own hands and now he proves it.

The Court: Just a minute, Mr. Nelson.

Mr. Nelson: I am sorry.

A. I went to the Superintendent of Police.

Mr. Nelson: It makes my blood boil when a man invades another man's privileges irrespective of the law.

The Court: Don't explain to me. Explain to the jury.

A. I went to the Superintendent of Police in Philadelphia and told him that Steve Nelson, of whom he knew a great deal already—there was a great deal of discussion in the newspapers about whether you were physically able to return to Pittsburgh or not. I asked the Superintendent of Police to ascertain himself. He said he would be glad to do so and called in two City detectives. The [fol. 970] two City detectives asked me to go along with them and I did. We got to the house, they rang the doorbell; and you said, "Come in." I specifically instructed the City detectives under no circumstances should they discuss this episode with anyone, and the Superintendent gave orders that no newspapers were to be notified under any circumstances. You came to the door, you opened the door. You were able to walk and move. I saw you and we talked a few words, and nothing was said about this. It was your own doings. You telephoned the newspapers and told them about it.

Q. Didn't the District Attorney, Mr. Lewis, have access to the full facts from the hospital regarding my physical condition, and weren't they reported to Judge O'Brien at the other trial at the time of the accident?

A. At the time of the accident? This was a long time after the accident, months after the accident.

Q. That was exactly six weeks after my second operation.

A. I don't know. You had been seen going in and out of that apartment house and that fact did not conform to the story that you were unable to move.

Q. When you came to my house you found me in bed.

A. You came to the door and opened the door and then went back to bed.

Q. The door was open. My wife went out to the store. I was expecting her and also the doctor to come in, and naturally I could not even see the door—the door was [fol. 971] around the corner of the room—and who comes

in but Michael A. Musmanno, candidate for the Supreme Court.

Mr. Lewis: That is objected to and I ask that it be stricken.

The Court: Don't make statements, Mr. Nelson. Ask your question.

Mr. Nelson: This man was permitted to make a five minute speech.

The Court: He is under oath and you are not. When you are on the stand you will be permitted to make any statement you wish.

Mr. Nelson: He disregarded my rights and the rights of a citizen. He barged in my home, uninvited, in order to see whether he could not get something out of me for his campaign.

The Court: That is the inference you want the jury to try to draw.

A. I made it very clear that no reference was to be made to this visit of mine. I said nothing, the police said nothing. You were the one who got on the long distance telephone and called the Pittsburgh Post Gazette and told them all about it.

[fol. 972] Mr. Nelson:

Q. I was indignant because a man was undertaking upon himself to take out my body to help him get into the Supreme Court.

A. You were so indignant that you told lies.

Q. That is hard to compete with you.

The Court: Mr. Lewis, do you want to object?

Mr. Lewis: I object to that remark and ask that it be stricken.

The Court: The last remarks by the witness and by the defendant will be stricken from the record.

Mr. Nelson:

Q. It is a fact, is it not Mr. Musmanno, that Judge O'Brien after hearing a report of my accident, ruled against Mr. Lewis that the case be severed?

A. That was months before, Mr. Nelson. I went there after you had been there a long time, and after you had been seen going in and out of that apartment and conferring with other Communists, which I thought was a further menace to my Country, and I went in there and I never said anything about this until this day.

Q. You had no legal right to come into my house, did you?

A. I certainly did. The Superintendent of Police, he came in and you greeted him rather affably, I thought. You [fol. 973] exchanged some words with him.

Q. He said that he don't know what this is all about. He was as embarrassed as anyone could be.

A. I don't see why he should be embarrassed.

Q. He saw me lying on the bed. You wanted to run out and I told you to look at the leg.

A. I asked you how you were feeling, "Steve," and when you were coming to Pittsburgh, and then you uttered profanity, and you certainly did not treat us as guests.

Q. I don't consider you, a fascist, a guest.

A. If you are going to call me a fascist, I will have to indicate that you are a traitor to your Country.

Mr. Nelson: I ask that a juror be withdrawn and this case continued.

The Court: I can't do that, Mr. Nelson. You are just as objectionable in your remarks, and in the manner in which you are conducting yourself as is the witness. I can't help you out on it. Your motion is refused.

Mr. Nelson:

Q. You say Mr. Witness, this was away after the time the accident occurred? Well, how long does it take for a compound fracture to heal?

A. I am not a doctor.

[fol. 974] Q. You knew that was it.

A. All I know is——

Q. If you don't know, all you have to say is you don't know.

A. I don't know.

Q. But you did know that I had a compound fracture where the bones came out, both of them; there were many

cracks in my kneecap, and my kneecap was taken out, and when you came into my home I had four steel pins, two inches thick in my leg, and I was laying on my bed.

A. You came to the door of your own locomotion, and opened the door. You were disabled, I knew that, but you were not disabled sufficiently not to move, and as a matter of fact you moved around very well.

Q. I moved in bed.

A. Yes, you tried to hit me with a crutch.

Q. It is a good thing you were not close enough.

A. That shows your whole attitude of life.

Q. When a rat invades my home I have a right to strike him.

A. When a skunk talks to me that way I should not have to stand for it.

Q. You are a fine example of a Supreme Court judge. You think you are Mussolini.

A. You fought for Communism in Spain, but you didn't fight for the United States. That is what you are, a traitor. If you would be as loyal to your country as I am [fol. 975] you would not get into the difficulties you are now in. You should have risked your life for this great Country.

Mr. Nelson: How long is this guy going to talk, your Honor?

The Court: As long as you engage him in conversation. I am going to sit back and let you argue it. I have tried to limit you both, but if you will not address your remarks to the Court there is nothing I can do.

Mr. Nelson:

Q. Mr. Musmanno, how many judges are there in the State of Pennsylvania?

Mr. Lewis: That is objected to.

The Court: Objection sustained.

Mr. Nelson:

Q. Well, are there 200?

The Court: I have sustained an objection to that question.

Mr. Nelson:

Q. Do you know a single judge that would walk into another man's home when he was sick, down in bed, and try to drag him down in jail, as you did?

[fol. 976] Mr. Lewis: That is objected to.

The Court: Objection overruled.

A. Did I try to drag you out of bed? Did I try to drag you out of your house?

Q. You came there thinking you were going to be able to make real capital——

The Court: We will have no more debates on this question. Ask your questions and they will be answered.

Mr. Nelson:

Q. You couldn't name one judge who would do that.

The Court: That has been ruled out, Mr. Nelson. I will have no more questions about it.

Mr. Nelson:

Q. I believe you testified, Mr. Musmanno, that you were the author of about seven books?

A. That is correct.

Q. One of those books is called "After 12 Years"?

A. That is correct.

Q. Did you, or did you not, write in your book, on the case of Sacco and Vanzetti, on page 32, the following——

[fol. 977] Mr. Lewis: That is objected to for the reason the book is not in evidence.

The Court: If you want to have it marked as an exhibit, do so.

Mr. Lewis: May we have an offer on this?

The Court: Very well, come up gentlemen.

(At side bar.)

Mr. Nelson: Your Honor, I want to show by quotations in this book that this witness condemned, in fact, at one time certain procedures that are being followed now in regard to Red hysteria and the attitude of minority political

parties, and where he condemned the use of this type of burning of literature, or denying people the right to read the literature. That this witness—there were lapses in his life when he acted as a Progressive and when he had different views, and at this time when it is very handy for him to criticize it as Red hysteria, he is using it. I think it shows a certain unstable quality in my judgment, and his testimony can't possibly criticize these matters as he testified, but shows political bias now, and I want to [fol. 978] show that to the jury.

Mr. Lewis: That is objected to as immaterial.

Mr. Nelson: I don't intend to go into the whole thing, just certain excerpts.

The Court: How many excerpts do you wish to read.

Mr. Nelson: About four.

Mr. Lewis: This is objected to as incompetent, immaterial and irrelevant and has nothing to do with the issue in this case.

The Court: This witness here has testified as to many things, and his credibility is before this jury, and this man has the right to show these things, which he previously questioned as to affecting his credibility. That is the only reason we are permitting this. We will overrule the objection. You may read the excerpts.

Mr. Nelson: One more thing, your Honor. I am getting tired and I wonder if we might have a short recess.

The Court: Very well.

[fol. 979] (Recess.)

(After recess.)

Mr. Lewis: Before anything is read from the book I wish the defendant would have it marked as an exhibit and identified.

The Court: Very well, Mr. Nelson, have the book marked as an exhibit and identified by the witness.

(Book entitled "After 12 Years" marked as Defense Exhibit A.)

Mr. Nelson: Defense Exhibit A, page 32, going on over to part of page 33, the bottom of page 34, and the top of page 35.

The Court: Ask the witness if he can identify the book.

Mr. Nelson:

Q. Do you know this book, Mr. Musmanno?

A. I do, yes.

Mr. Nelson. For the purpose of identification, this is Defense Exhibit A. On page 32 there is a title in quotations, "A Mob Is a Mob," and it is for the purpose of —

[fol. 980] Mr. Lewis: Just a minute. Is this a question being asked of the witness.

The Court: What you want to read, I assume, are certain excerpts from that book.

Mr. Nelson: Yes, Your Honor.

The Court: The witness has not admitted yet that he knows what it is.

A. Yes, I am the author of that book which was published in 1939 by Alfred A. Knopf, Inc., New York.

The Court: You may offer the book in evidence. The witness has already been asked the question whether or not he knows what the book is.

Mr. Nelson: My purpose is this. This man made certain statements here. Now, I have a book he wrote, from which I believe I can quote certain things, I believe he stated something quite different than he stated here on the stand.

The Court: We have ruled that you may read those excerpts to the jury.

Mr. Nelson: All right.

[fol. 981] The Court: When was the book published?

Mr. Nelson: 1939 by Alfred A. Knopf, Inc., New York and London.

The Court: Very well, you will read it without certain voice inflections, and without repetition.

Mr. Nelson:

Q. Reading from page 32, starting on this new chapter called "A Mob Is a Mob." "The years 1919 and 1920 fall within a period which has become known as the Age of the 'Red scare.' America has just emerged from the World War; it had been frightened with stories about world revolution; it has been fed with stories of radical activities among certain sections of the working classes.

Under orders from A. Mitchell Palmer, Attorney General in President Wilson's cabinet, dramatic raids were made on headquarters, meeting-places, and homes of assumed "Reds" throughout the nation. In the conduct of these raids, however, it often happened that not only were innocent persons victimized but the letter and spirit of the Constitution of the United States were frequently violated. Wholesale arrests of aliens and citizens were made without warrant or process of law; men and women were jailed and held without access to friends or counsel; homes were entered without search warrants and property seized and [fol. 982] removed; other property was destroyed; working men and working women suspected of radical views were abused and maltreated." There is more that I would read in this chapter but I don't want to burden the jury.

On page 33, in the third paragraph, it continued on as follows: "500 Department of Justice agents and local police manned the raiding parties. Their general mode of operation was suddenly to descend upon meeting-places of assumed radicals, break in without warrants or warning, arrest those inside, convey them to police stations, line them up against a wall, and search them for incriminating literature. In many instances the invading units brandished guns, simulating more the action of barnstorming outlaws than agents of law and justice. About 1,000 persons, aliens and citizens, men and women were arrested and thrown into jail in these raids."

The whole paragraph is pertinent to the point. I will continue on the bottom of page 34. "The overt act which would subject the prisoners to detention and possible deportation was the possession of papers, magazines, or books of a radical nature, or assumed to be such. Many of the prisoners were arrested in boarding-houses or halls, in which were found large quantities of literature and pamphlets, the origin and ownership of which were necessarily matters of guess work. In cases of doubt, aliens, already frightened by terroristic methods of their arrest and detention, were, in the absence of counsel, led easily [fol. 983] into some kind of admission as to their ownership or knowledge of the so-called seditious literature."

This is again quoting from the paragraph at the top of

page 35. "Louis F. Post, who, as Assistant Secretary of Labor, knew of the Palmer raids officially, spoke of the participants in the January 1920 raids as having been 'numerously recruited for the occasion,' rough-neck groups of the 'strike-breaking' variety and actively supported by local police authorities."

A. I presume you are going to question me generally on this?

Q. Yes. "The whole 'red' crusade seems to have been saturated with 'labor spy' interests—the interests, that is, of private detective agencies which, in the secret service of masterful corporations, were engaged in generating and intensifying industrial suspicions and hatreds. It was under these influences, apparently, that the appropriations authorized by Congress 'for the detection and prosecution of crimes' exclusively, were in part diverted to the 'rounding-up' of aliens, not as criminals but as the possible subjects of administrative deportation."

And then on page 36, the second paragraph, "Pile of Chains"; and continuing on, Mr. Post exclaimed in amazement, 'Yes, indeed,' replied both investigators in one voice. They explained further that the prisoners had been marched through the streets of Boston to the immigration station in chains."

[fol. 984] You wrote this, didn't you, Mr. Musmanno?

A. I did.

Q. And when you speak of the "Red scare," using it in quotations, you mean by that that it was not the right thing to do? I don't know your meaning. How did you mean that? "The Red scare." How do you mean that? How did you use that phrase in that book?

A. I used that phrase in the the light of the entire treatment of the subject, which was a story of two working men in Massachusetts, Nicola Sacco and Bartolomeo Vanzetti; one was a shoemaker and the other was a fisherman. They became the subject of what I regarded a gross miscarriage of justice. They were accused of having committed a pay-roll robbery, and they were tried and they were convicted, and in the latter part of that trial I volunteered to go to Boston to help in the defense of these two men, without compensation—I did it entirely voluntarily—and later on

I wrote this book. It was called "After 12 Years," because it was written 12 years after the trial and the final adjudication. I used the phrase "Red Hysteria" in the sense that it was being used at that time. There was not analogy between the Red scare that you, Mr. Nelson, point to and your seditious actions in this case. Mr. Nelson, I said they assumed Reds had been arrested, they assumed they were Reds, they assumed they were radicals, but there is nothing assumed in this case. I swore to the information against Steve Nelson and his two co-defendants at that time because I had reason to believe they were Reds as we understand Reds, Communists intending to overthrow our government by force and violence. I pointed out in this book that much literature had been confiscated by authorities without complaints and under a system of guess work. There was no guess work about this literature seized in this case because this literature was under the control of the defendant, Steve Nelson, and it was sold by a man in his organization; I got it in his organization. So there is no comparison there whatsoever. In this Sacco and Vanzetti case people were arrested, if you read the book Mr. Nelson, without warrants. There was a warrant in this case. There was a search warrant in this case—we had a search and seizure warrant. So that there is no comparison whatever between these two cases, one which happened in 1919 and 1920, and the one now in the year of Our Lord 1950. Some of the individuals arrested were deprived of their counsel—1951, incidentally, or rather 1952—these men were arrested and were without benefit of counsel. Mr. Nelson, as I indicated, had various attorneys when he was apprehended. He had various attorneys when he had his preliminary hearing, I believe he had three lawyers there at that time.

Mr. Nelson: Is he allowed to make these grandstand speeches?

The Court: You asked a question about the Red scare. I can only limit him to answering that.

[fol. 986] Q. He can't take away my time.

The Court: What significance does the Red scare have in the book?

Mr. Nelson: In what sense did he use the phrase, "Red scare," that is the question I asked him and he proceeded to make a speech.

The Court: Let us limit it to the "Red scare."

A. That period was referred to as "The Red scare period."

Mr. Nelson:

Q. This is not a speech about Mr. Musmanno, but about Sacco and Vanzetti. Didn't you in the same book also say the following?

Mr. Lewis: Where, on what page?

Mr. Nelson: Page 38.

Mr. Lewis: He didn't see it.

Mr. Nelson: He saw it.

A. You didn't mark page 28.

The Court: Page 32 to 36.

Mr. Nelson: I am sorry.

[fol. 987] (Witness handed the book.)

A. Yes.

Q. I will have to read this whole section, Mr. Musmanno, in order to make—not to take it out of the context, I will have to read it all. On the top of page 38, the first paragraph, "on the morning of May 3, 1920, the body of Andrea Salsedo, crushed to a pulp, was found on the sidewalk. The news of Salsedo's — filled Vanzetti with horror. He knew that the subjects of Palmer's raids were being arrested and many of them deported, but now came the realization that through some mishap they might even suffer death while in the custody of the Federal agents." You read that?

A. Yes, I read that.

Q. Who were the Federal agents you referred to?

A. I didn't have any particular kind in mind.

Q. I don't mean the individual.

A. Agents of the Federal Government.

Q. Were they under J. Edgar Hoover?

A. No, under Palmer.

Q. You wouldn't say that Mr. J. Edgar Hoover was in charge of that Department, or don't you know?

A. I know that he was, at that time, interested in that particular subject. I don't know whether he had any such agents.

Q. You are speaking of the forerunner of the F.B.I.?

A. I said Federal agents.

[fol. 988] Q. "He also learned that the Department of Justice, through its local agents,—" that is Mr. Palmer—"was planning more raids and that Plymouth and surrounding towns were to be included in the terroristic itinerary of the raiders. The telltale evidence which would subject one to arrest and possible deportation was the possession of 'radical literature' or what the agents regarded as such.

"There was no standard for the agents to follow in deciding what was radical and what was not. Sometimes the most innocuous document was branded as subversive. Vanzetti and his friends, in contemplating the situation, concluded that their safety best lay in the concealment of all literature. They were reluctant to destroy their newspapers, magazines and books, because they hoped that this wave of intolerance would break on the rocks of the Plymouth coast and that they would soon again be able to entertain their political and economic beliefs undisturbed, as the Pilgrims had enjoyed their religious freedom in that same place 300 years before.

"They thus decided to gather up all literature in the homes of fellow workers and hide it until the 'Red scare' had passed." Did you read that, Mr. Musmanno?

A. That is right.

Q. And Sacco and Vanzetti were, when they were brought to trial, although they were charged with murder, they were referred to as radicals, were they not?

A. That is true.

[fol. 989] Q. They were in fact Anarchists?

A. They called themselves Libertarians.

Q. They were Anarchists, they maintained certain ideas?

A. Are you going to ask me about that page? And if you want to discuss it generally, and the Court permits, I will go into it.

Q. The Government, at that time, and its agents, the

agents of the F. B. I., did go into places and find literature and they concluded that it was seditious?

A. No, see, you are wrong there.

Q. Wait a minute. You answered the question no.

A. I believe I have a right to offer an explanation there.

Q. Nobody can stop you, Mr. Musmanno. You always have to have something to say. It is a fact that Vanzetti, and his friends, feared that the Government at that time, because of the Red scare, would throw them in jail if they found literature on them; is that a fact? I am not saying what kind of literature, now.

A. That is what I said in the book but there is no comparison between that literature and this literature, which I know to be seditious and urges the overthrow of the Government by force and violence.

Mr. Nelson: I ask that the Court restrain this witness and strike that answer from the record.

[fol. 990] The Court: We will ask the jury to disregard the last part of the explanation. We will strike that from the record as not responsive and improper.

Mr. Nelson:

Q. But it is true, is it not Mr. Musmanno, that the agents of the Government at that time, as you said that it had been frightened with stories about world revolution—I will quote the exact words as you wrote them, rather than my interpretation. "America had just emerged from the World War; it had been frightened with stories about world revolution; it had been fed with stories of radical activities among certain sections of the working classes.". Is your meaning to be taken that the Government at that time, because of this Red scare, proceeded to arrest people who had certain radical literature; is that true?

A. What I said there, and which you read, was that the world was frightened by the thought of world revolution, and this due to the fact that Lenin had stated that he was for world revolution, and that is what caused me to use that phrase.

Q. But you used this expression in your book here, disparagingly, don't you Mr. Musmanno?

A. With regard to these two men, yes.

Q. You speak generally?

A. Yes. What those men were doing, and what I thought you were doing—there is a vast difference between that [fol. 991] Red scare and this Red literature.

Q. So you draw the line? At that time there was a foundation for a Red scare, is that it?

A. I do know that some innocent people were charged with having literature, but which, upon investigation, was found not to be of radical character. So that there is no comparison of that case between 1920 and what happened in 1950 when I, with the proper authority of the law, went into the headquarters and obtained this literature.

Q. You do state, do you not, that this literature that Sacco and Vanzetti wanted to put away, was generally classed as radical literature?

A. I saw some that was not radical literature. You recall what I said in my book——

Q. Wait a minute. You said some of it was not, but was it the type of literature that could have been safely kept in most homes at that time?

A. I know that Sacco and Vanzetti did not have any literature of a seditious manner, which I have stated.

Q. Didn't you state in this book that Mr. Vanzetti, feeling he might be prosecuted if this literature was found in his home—didn't you state that he was framed on this murder charge, but that his intention of going to that town was to find a place, because he didn't want that literature found on him?

A. That is right. Here was an agency that was claiming [fol. 992] that it was literature of a seditious character, but it was not, and the book says that, if you will read.

The Court: We will recess at this time until tomorrow afternoon at 2:15 P. M.

[fol. 993] Thursday, January 3, 1952. Afternoon Session. Met pursuant to adjournment and the taking of testimony continues.

(At Side Bar):

The Court: Mr. Nelson, I have permitted you to cross examine considerably on collateral issues for the express purpose of affecting the credibility of the witness. You

have gone into many matters but I am afraid from now on I will have to limit you on those things because we have spent too much time affecting his credibility. You will have to limit yourself now to the matters of direct examination. You are probably through with those collateral matters, aren't you?

Mr. Nelson: I haven't finished quite a bit of what you call—I don't know whether they are called collateral.

The Court: For affecting the witness' credibility, they are not what he testified to.

[fol. 994] Mr. Nelson: Oh, I have just a few to get into the windup and then—

The Court: How much time would you take on it?

Mr. Nelson: Well, if he answers my questions "Yes" or "No" it won't take very long, and I wish the Court would help me in that respect.

The Court: Well, I am not going to cut you off just like that, but I think we are about at the end of the line as far as attacking his credibility.

Mr. Nelson: I might finish in an hour or so, but it shouldn't take so long as far as I am concerned. I think the important thing is for me to get a just trial and to raise the questions.

The Court: That's the reason I have given you two days on collateral matters.

Mr. Nelson: I didn't have two days. I had one day on [fol. 995] that, and then I couldn't get into the things he testified to because only last night, or rather this morning, I got a transcript as far as his fourth exhibit is concerned and there are over 110, so I haven't even had a chance to—

The Court: Well, abbreviate any more collateral issues as far as bias, prejudice and motive are concerned and get into the other just as soon as you can.

Mr. Nelson: Well, what would you do then on the matter of cross examination on these things he testified to, what can I do? How can I properly cross examine him? I haven't the transcript as yet. I know the reporters are working hard, but you are pressing awful hard in this case.

The Court: Isn't there a substantial amount in the transcript you have?

Mr. Nelson: I had no chance to prepare on it.

The Court: Of course, most of them are exhibits and the books are here.

[fol. 996] Mr. Nelson: But I don't recall exactly what he said in each case, and that's too much to prepare notes and so forth.

The Court: Well, the books are marked

Mr. Nelson: It would be awfully cumbersome to handle it that way. I would like to see what he said and then I want to find the pages from him wherein he stated, then it's all through and nothing that isn't warranted.

The Court: Well, I can't limit you, of course, on your cross examination on the testimony in the case. The only thing I want to limit you on now is on these collateral matters, I will have to place some limit on that.

Mr. Nelson: Well, I am coming to two or three of these collateral matters that are important.

The Court: Well, what are they? We may be able to rule on them now.

Mr. Nelson: Well, they have to do with his political bias and motive.

[fol. 997] The Court: Well, you have gone into that already, I believe——

Mr. Nelson: I haven't exhausted it. I haven't had a chance to finish it.

The Court: Well, I'll give you a little more time on it but conclude the collateral matters just as quickly as you can.

Mr. Nelson: Now, then, I would like to raise a question with you regarding this ceremony. Here you have a Supreme Court Judge that brings the austerity of the Supreme Court to this court room, and no matter what anyone will say all those jurors know about the ceremony and it has been played up for weeks now; and his behavior on the stand taking advantage of his high position, makes it very difficult to conduct a cross examination, and it's even harder to get the truth out in such a way, objective way, the jurors may weigh it without bias. And this man is biased, by has all this publicity. On the basis of this, your Honor, I believe a motion is in order to withdraw a juror and call a mistrial.

[fol. 998] The Court: If that's your motion I will refuse the motion and grant you an exception.

Mr. Nelson: I don't know whether or not this is correct, but I noticed here that in the paper last night that there is going to be four witnesses to follow Mr. Mussumano. Whether that's true, I don't know——

Mr. Lewis: I don't know myself.

The Court: I don't know either. The newspapers write a lot of things——

Mr. Nelson: If such witnesses are to be brought forward here by the Prosecution—because I am not a lawyer and I can't just prepare these things in the proper way—I am at a disadvantage as it is—but I think it would be proper if the Prosecution would tell me who they are going to be, who the witnesses are going to be.

Mr. Lewis: I have never heard of that before in the time I have been in this Court House.

[fol. 999] Mr. Nelson: I'm not a lawyer but my impression is that would be only fair——

The Court: Well, your indictment shows witnesses. You are entitled to that information.

Mr. Nelson: The ones that were before the Grand Jury you mean?

The Court: The ones before the Grand Jury. If they have any additional witnesses there is no reason to withhold the information. Of course you are conducting your case, Mr. Lewis. If there is no particular reason I would suggest that any additional witnesses, that the defendant be notified of them.

Mr. Lewis: We will have additional witnesses but I certainly don't think the Prosecution should be called upon to reveal any additional witnesses here outside of the ones that are on the indictment.

The Court: Well, at this time we are not compelling you to do so. I will study the matter and either at the end of [fol. 1000] this session or at the beginning of the next session I will rule on the matter.

Mr. Nelson: Just a question. Did you inquire into the matter? You said you were going to go into the question of the price of the transcript. Do you have any information on that, your Honor? It's very hard on me financially.

The Court: Well, I asked the reporter at the last discussion if possible to negotiate with you on the matter, inasmuch as the transcripts were expensive and you had been

granted some reduction at the last trial, so I will make the same request again and have the reporters work it out with you after the session. It isn't for me to set the price, because that is set by the Legislature, so I think the only thing I can do is request them to do so.

Mr. Nelson: Thank you.

(End of side bar.)

[fol. 1001] MICHAEL A. MUSMANNO, recalled to the stand and resumed his testimony as follows:

Cross-examination (Continued:)

Mr. Nelson:

Q. Mr. Musmanno, I believe that you testified that you first ran for State Legislature in 1928.

A. I was a candidate in '26 but not elected. Then I was a candidate in '28 and was elected.

Q. I see. Was it in the campaign of 1926 in which you were a candidate that you ran on what was known as the Mellon Ticket?

A. I was never a candidate on a Mellon Ticket.

Q. You were never a candidate on a Mellon Ticket?

A. Never in all my years; never.

Q. Never?

A. Never.

Q. You are absolutely sure about that?

A. I am positive.

Q. Were you a candidate at that time on the Republican Ticket?

A. Yes, I was.

Q. And at that time the Republicans had sway in this County?

Mr. Lewis: I object to that.

Objection sustained. Exception noted.

[fol. 1002] Q. Well, it is a fact, is it not, that it was in those days that Andrew Mellon played a key role in the politics of this County and State and Nation?

Mr. Lewis: This is objected to.

Objection sustained. Exception noted.

The Court: We can't go too far afield. We have granted many concessions insofar as testing the witness' credibility, motive, bias, and prejudice, but we can't go into the trial of a political power here or elsewhere, for that purpose.

Mr. Nelson: Well, your Honor, I want to show that this witness——

The Court: He has testified he was a candidate on the Republican Ticket. It's a matter of genera' knowledge I think——

Mr. Nelson: I'm not no lawyer, I don't know how to frame this, but I want to briag out the fact that this man has [fol. 1003] claimed on various questions——

Mr. Cercone: I object to this as speech making.

The Court: He isn't making a speech. If you want to make an offer here come forward to Side Bar and we will hear the offer which you wish to make.

(At Side Bar):

Mr. Nelson: Your Honor, I have a clipping, a photostat. I don't have it with me; it is with the record of the other case; I know that I saw it myself—but that record isn't in the court room and I can't produce it right here at this time. I would make a plea that the Court permit me to bring that clipping and read it and it will show that what I was asking was true and what I want to——

The Court: It may be true but it isn't relevant in this case. I have ruled that out as irrelevant.

Mr. Nelson: I see. Your Honor, I want to show that he was tied with the Mellon Machine until the Roosevelt [fol. 1004] came along and then he became a Liberal and Progressive and he was a Progressive at a time when the country was Progressive, and now that things are going against that stream he jumps on the other bandwagon. I think that is important to show instability, and shows that the man can be unprincipled.

Mr. Lewis: This is objected to.

The Court: The objection is sustained. It is not to be removed from this matter.

Exception noted.

(End of Side Bar.)

Mr. Nelson:

Q. All right. Since the Court ruled I can't go into this question, let me ask you this: Are you active in politics now in this county?

Mr. Lewis: This is objected to.

Objection overruled.

A. I am an American citizen. I value my right of suf- [fol. 1005] frage. I am tremendously interested in the welfare of my country, in my community, and in my state, and certainly in my county.

Q. And I take it that you are also active in your home township, Stowe Township, in the political affairs of that area?

Mr. Lewis: This is objected to.

A. None whatsoever.

Mr. Nelson:

Q. But you have had your political start there, haven't you? Let's put it that way.

A. I was born there, have lived there, and am proud of Stowe Township, my home community.

Q. You did have your political start there? I mean to say you began—you ran as a candidate while you were in Stowe Township, I mean——

A. I not only had my start there, that's where I lived all the time. I still live there.

Mr. Nelson: That's a simple question for a simple answer, your Honor——

The Court: You want to know whether he represented Stowe Township when he was in the Legislature; is that what you——

Mr. Nelson: Just whether or not that was the place [fol. 1006] where he ran from when he ran for the Legislature.

The Court:

Q. Is that included within your Legislative District?